# United States Court of Appeals for the Second Circuit



**APPENDIX** 

Signed

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B

ROBERT J. MYKINS,

Plaintiff-Appellee

P/5

v.

UNITED STATES TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE,

Defendant-Appellant

ON APPEAL FROM THE ORDER OF THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NEW YORK,

APPENDIX



SCOTT P. CRAMPTON, Assistant Attorney General,

GILBERT E. ANDREWS,
MICHAEL L. PAUP,
WILLIAM S. ESTABROOK III,
Attorneys,
Tax Division,
Department of Justice,
Washington, D.C. 20530.

Of Counsel:

RICHARD J. ARCARA, United States Attorney. PAGINATION AS IN ORIGINAL COPY

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#### [DOCKET ENTRIES]

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# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

ROBERT J. MYKINS,

U.S. District Court Docket No. Civ. 75-224

Plaintiff-Appellee

- vs -

U.S. Court of Appeals Docket No. 75-6096

U.S. TREASURY, I.R.S.,

Defendant-Appellant :

# INDEX TO RECORD ON APPEAL

1. Complaint.

- 2. Order to Show Cause on Motion for Preliminary Injunction.
- 3. 2 Forms U.S.M.-285, Marshal's Return of Service and Summons.
- 4. Defendant's Motion to Dismiss.
- 5. Preliminary Injunction and Order requiring written response by Plaintiff to be filed on or before September 15, 1975.
- 6. Order to Show Cause returnable August 6, 1975.
- 7. Transcript of Proceedings of June 23, 1975.
- 8. Transcript of Proceedings of July 28, 1975.
- 9. Transcript of Proceedings of August 6, 1975.
- 10. Motice of Appeal.

UNITED STATES OF AMERICA UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK CITY OF ROCHESTER, NEW YORK

ROBERT J. MYKLAS
993 Stowell Orive
Rochester, New York.

Plaintiff,

-VS-

COMPLAINT

U.S. TREASURY DEPARTMENT-INTERMAL REVENUE SERVICE Federal Building - 100 State Street Rochester, New York,

Defendant.

Plaintiff, by his attorneys, Mittleman & Pietropaoli, for his complaint against the defendant, respectfully alleges:

#### FOR A FIRST CAUSE OF ACTION

- 1. Plaintiff is a resident of the Town of Greece, County of Honroe and State of New York.
- 2. Defendant is a branch of the United States Government, to wit, United States Treasury Department-Internal Revenue Service.
- 3. That on or about July 16, 1974, the plaintiff, Robert J. Mykins, together with one, Robert H. Schmidhammer, entered into a management agreement with one, Lim. B. Duffy Carting Company, Inc., a copy of which is attached merels and made a part hereof.
- 4. That pursuant to the aforesaid management agreement, the plaintiff herein advanced certain monies to Wm. B. Duffy Carting Company, Inc. in order that company could centinue in business.
- 5. That on or about the 17th day of July, 1974, plaintiff and Was 8. Duffy Carting Company, Inc. entered into a Security Agreement in which the

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plaintiff herein obtained a security interest in all of Nm. B. Duffy Carting Company, Inc. personal property, debtors accounts, contract rights, chattel paper, accounts and contract rights now owned or hereinafter owned by Nm. B. Duffy Carting Company, Inc. and all chattel paper now owned or hereinafter owned by Nm. B. Duffy Carting Company, Inc.; a copy of said security agreement is attached hereto and made a part hereof.

- 6. That in furtherance of said security agreement referred to above, the plaintiff herein caused to be filed a finanting statement pursuant to Article 9 of the Uniform Commercial Code of the State of New York, said financing statement having been filed in the office of the Honroe County Clerk on July 17, 1974; and further pursuant to said security agreement, the plaintiff herein caused a financing statement to be filed in accordance with Article 9 of the Uniform Commercial Code of the State of New York with the office of the Secretary of State of the State of New York on September 26, 1974, copies of the aforesaid financing statements are attached hereto and made a part hereof.
- 7. That on or about the 21st day of January, 1975, the defendant herein filed a federal tax lien in the office of the Monroe County Clark against said Wm. B. Duffy Carting Company, Inc. in the amount of \$78,681.29.
- 8. That pursuant to said federal tax lien, the defendant herein seized various items of personal property owned by Mm. B. Duffy Carting Company, Inc.
- 9. That pursuant to said seizure, a public sale of said items was held at the office of Wm. B. Duffy Carting Company, Inc. on May 15, 1975 at 9:30 A.M. Pursuant to said sale, defendant herein received \$11,892.00,

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which, upon information and belief, defendant herein applied to the taxes due and owing to defendant by ikm. B. Duffy Carting Company, Inc.

- 10. That said seizure by defendant of the assets of Wm. B. Duffy Carting Company. Inc. was in violation of the plaintiff's security agreement; and further that the sale of said assets pursuant to said seizure was in violation of plaintiff's security interest herein and contrary to law.
- 11. That plaintiff's security interest was perfected prior to the filing of defendant's federal tax lien and consequently, plaintiff's interest in the assets of wm. B. Duffy Carting Company, Inc. have priority over defendant's federal tax lien.
- 12. That defendant wrongfully and contrary to law applied the proceeds of the sale of the assets of Nm. B. Duffy Carting Company, Inc. to reduce its federal tax lien.
- 13. The proceeds of said sale, referred to above, should have been paid over by the defendant and should have been applied as partial satisfaction of plaintiff's security interest.

#### FOR A SECOND CAUSE OF ACTION

- 14. Plaintiff repeats and realleges every allegation contained in the First Cause of Action.
- 15. That pursuant to said federal tax lien filed by defendant against Wm. B. Duffy Carting Company, Inc. on January 21, 1975, defendant herein has issued several notices of levy to the debtors of Wm. B. Duffy Carting Company, Inc.; copies of said notices of levy are attached hereto and made a part hereof.

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- 16. That the issuance of said notices of levy have impaired the security interest of the plaintiff herein.
- 17. That plaintiff has no adequate remedy at law relative to the second cause of action.

WHEREFORE, plaintiff demands judgment against the defendant in the first cause of action in the sum of \$11,692.00 , together with interest from May 15, 1975; and further plaintiff in the second cause of action prays for a judgment as follows:

- A. That defendant herein be enjoined from issuing any notices of levy pursuant to its federal tax lien of January 21, 1975 until such time as plaintiff's security interest in Wm. B. Duffy Carting Company. Inc. has been satisfied.
- 8. That all persons and/or corporations upon whom said notices of levy have been served shall be enjoined from paying any monies over to the defendant herein until such time as plaintiff's security interest has been satisfied.

Dated: Rochester, New York June 11, 1975. Yours, etc.,

MITTLEMAN & PIETROPAOLI Attorneys for the Plaintiff OFFICE & P. O. ADDRESS 604 Executive Office Bldg. 36 West Main Street Rochester, New York 14614 Telephone: 716-232-6050

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#### MANAGEMENT AGREEMENT

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the time to the same to the

Agreement made this 16th day of July, 1974, by and between CROSS COUNTRY INDUSTRIES, INC., a New York Corporation, with its principal office at 350 Whitney Street, Rochester, New York (hereinafter "the COMPANY"), WILLIAM B. DUFFY CARTING COMPANY, INC., a New York corporation, with its principal office at 350 Whitney Street, Rochester, New York (hereinafter "DUFFY"), ROBERT J. MY-KINS, residing at 993 Stowell Drive, Rochester, New York (hereinafter "MYKINS"), and ROBERT H. SCHMIDHAMMER, residing at 13 Lafayette Park, Rochester, New York (hereinafter "SCHMIDHAMMER") MYKINS and SCHMIDHAMMER sometimes hereinafter collectively referred to as the "CONSULTANTS".

WHEREAS, the COMPANY is an OTC Public New York corporation with an authorized capital stock consisting of five million (5,000,000) shares of common stock having a par value of two (\$0.02)cents per share; and

Whereas, Duffy is a New York corporation currently a wholly owned subsidiary of the COMPANY; and

WHEREAS, the other parties, as such CONSULTANTS or their nominees, desire to manage the business affairs of DUFFY as herein provided and to regulate and limit the disposition of the shares of the COMPANY as herein provided;

NOW THEREFORE, in consideration of the mutual covenants herein contained, it is agreed as follows:

1.0 The CONSULTANTS hereby agree to deposit with the Treasurer or his nominee of DUFFY within five (4) days of the execution hereof by each respective party the sum of twenty thousand (\$20,000) dollars. An interest bearing note shall be issued by the COMPANY and/or DUFFY to the CONSULTANTS payable on demand from the date hereof with interest only payable monthly.

1.1 It is contemplated that the CONSULTANTS be granted a stock option to purchase common stock of the COMPANY with terms and conditions to be mutually agreed upon.

2.0 Each party to this agreement shall vote for the election of (or their nominee)

Robert J. Mykins

Robert H. Schmidhammer

David Smith

Lionel Courtemanche

as directors of DUFFY, and

Morris Diamond

David Smith & Robert J. Mykins

as directors of the COMPANY, and generally will so vote at share-holders and directors meetings as to carry out and make effective all the provisions of this agreement.

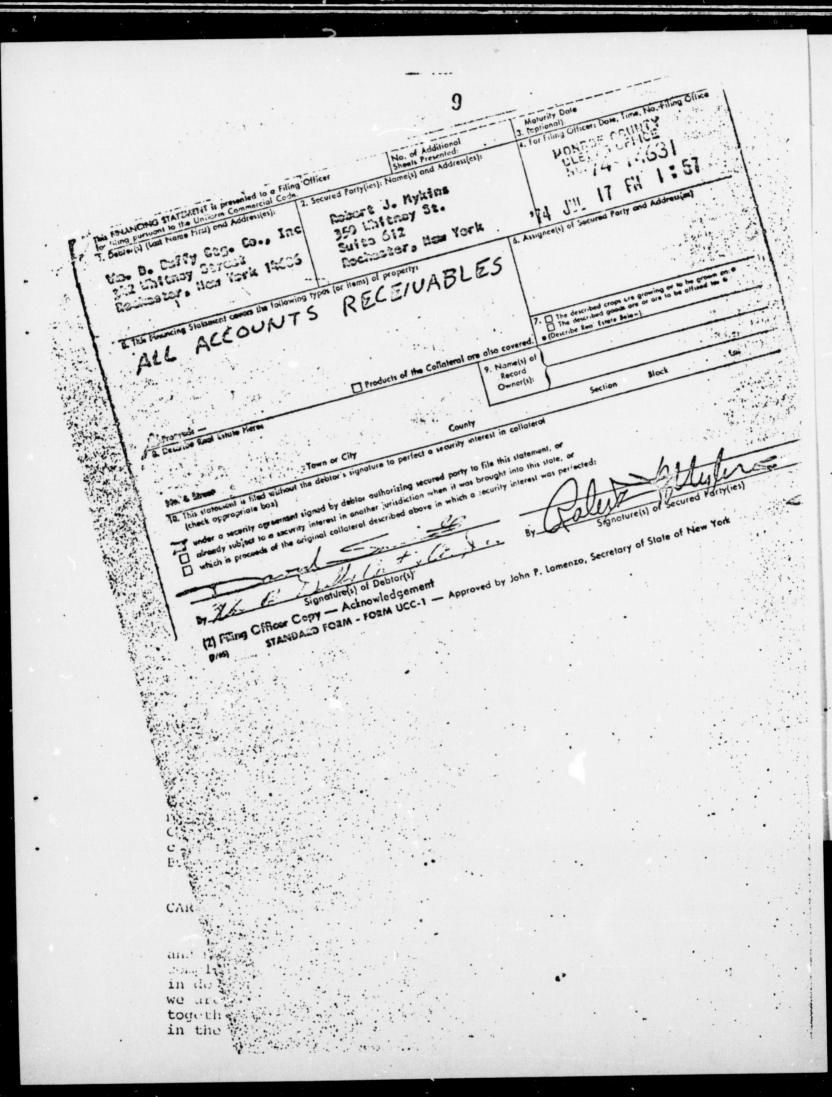
3.0 It is demonstrate that Lionel Courtemanche shall serve DUFFY as President, David Smith shall serve DUFFY as Vice President, SCHMIDHAMMER shall serve DUFFY as Secretary and Consultant, and MYKINS shall serve DUFFY as a financial Consultant. It is further characteristical that Morris Diamond shall manage the Real Estate of the COMPANY and serve 351 Whitney, Inc. as Fresident.

- 4.0 No salaries shall be paid by the COMPANY and/or DUFFY to any officer merely by reason of his holding office, provided, however, that nothing herein shall prevent the Board of Directors from paying reasonable compensation to any officer or other person rendering services to the COMPANY and/or DUFFY.
  - 5.0 As compensation for the CONSULTANTS they shall receive four (4) per cent of the gross sales and ten (10%) of the net before tax earnings of the gross sales in excess of One Hillion: Dollars (\$1,000,000.00) Also the CONSULTANTS shall receive an amount of One Thousand Dollars (\$1,000.00) per month plus any reasonable expenses for services performed, payable semi-monthly.

- 6.0 This agreement shall continue in force for a period of three years (3) from the date hereof.
- 7.0 This agreement contains the entire agreement of the parties with respect to its subject matter, and no modification or waiver of any provision hereof shall be valid unless it be in writing and signed by all of the parties hereto.
- 8.0 The waiver or breach of any term or condition of this agreement shall not deem to constitute a waiver of any other breach of the same or any other term or condition.
- 9.0 This agreement and all of the provisions hereof shall be binding upon the legal representatives, heirs, distributees, successors, and assigns of the parties hereto.
- 10.0 This agreement shall be construed in accordance with the laws of the State of New York.
- 11.0 This agreement may be executed in any number of counterparts, all of which together shall constitute one original agreement.

IN WITNESS WHEREOF the parties hereto have each placed their hand and seal, as on the day and year first hereinbefore written.

William B. Duffy Carting Co., Inc.	Cross Country Industries, Inc.  Mais Hamon Sey.
	In Smown to wing MV
WITNESS: Refert Schnickumnie,	35, WHITNEY INC. DATE: July 23, 1974
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for filing pursuant to	TEMENT is presented to a Fili the Uniform Commercial Cod		of Additional &	Moturity 3. (optional)		·····
CARTING	O. INC.	2. Secured Party(ies): Name(s) ROBERT J. 350 WHITU	MYKIUS	4. For Filing		Line 110. Filing Office
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	-11017. 1900	ROCHESTER,	N. 7. 146	06	0 141113	238,214
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			7	Date		
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8. Describe Real Estate	e Herc:	Products of the Collateral of	7 (-	(Describe Real Estate	Below).	
			9. Name(s) of Record Owner(s):			
No. & Street	Town or City	County		Section	Block	let
10. This statement is fit	'ed without the debter's signal	ture to perfect a security interes	t in colinteral			
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Munder a security a	prement signed by debter au	thorizing secured party to file t	his statement, or			
i already subject to	a security interest in another	jurisdiction when it was brough	t into this state, or			
which is proceed	of the original collateral desc	rited above in which a security	interest was perfec	ed:		
/						
WM. D. P	UFFY FARTIN	G CO. 11/C.	-01		1	
By Robert	1. Schmidra	nimes, sec.	By Walle	X	, lux	2
(2) Filing Officer	Signature(s) of Debtor		,	signature(s) of Si	Aured Party	(·es)
	Copy - Acknowledge					
(9/65) STANE	DARD FORM - FORM UC	C-1 - Approved by John	P. Lomenzo, Secr	ctary of State o	New York	·EDI

#### SECURITY AGREEMENT

(ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER INCLUDING LEASES)

NAME	1.		DATE	TULY 17 197
Wm. B. Duffy Ctg. Co., I	ATERAL KEPT	BUSINESS ADDRESS 342 Whitney St.	ROCHES	TER, N'. Y. 19606
Robert J. Mykins		OFFICE		(the Debtor) and
OFFICE ADDRESS 350 Whitney St., Suite 612	Rochester		STATE York	(the Second Section
ree as follows:			:	(the Secured Party)

1. Security Interest.

Debtor hereby grants to Secured Party a security interest (the Security Interest) in the following described personal property, in all Proceeds of any such property in any form and in all returned or repossessed Goods the sale or lease of which gives rise to any such

If marked here, in Debtor's Accounts, Contract Rights or Chattel Paper described in Schedule A hereto and in additional Schedules, if any, from time to time delivered by Debtor to Secured Party;

If marked here, in all Accounts and Contract Rights now owned or hereafter owned or acquired by Debtor,

If marked here, in all Chattel Paper now owned or hereafter owned or acquired by Debtor.

2. Indebtedness Secured. The Security Interest secures payment of any and all indebtedness of Debtor to Secured Party, whether now existing or hereafter incurred, of every kind and character, direct or indirect, and whether such indebtedness is from time to time reduced and thereafter increased, or entirely extinguished and thereafter reincurred, including, without limitation, any sums advanced by Secured Party for taxes, assessments, insurance and other charges and expenses as hereinafter provided (the Indebtedness).

by Secured Party for taxes, assessments, insurance and other charges and expenses as hereinalter provided (the Indebtedness).

3. Representations and Warranties of Dabtor. Debtor represents and warrants and, so long as any Indebtedness remains unpaid, Shall be deemed continuously to represent and warrant that: (a) each Account, Contract Right and Chattel Paper constituting the Collateral is genuine and enforceable in accordance with its terms against the party obligated to pay the same (the Account Debtor); amount represented by Debtor to Secured Party as owing by each Account Debtor or by all Account Debtors is the correct amount actually obligated to pay the same (the Account Debtor); and unconditionally owing by such Account Debtor or Debtors, except for normal each discounts where applicable; (d) no Account Debtor has any defense, setoff, claim or counterclaim against Debtor which can be asserted against Secured Party, whether in any proceeding to enforce the Collateral, or otherwise; (e) Debtor is authorized to enter into this Security Agreement and into the transactions Debtor's records concerning the Collateral are kept at the address specified above.

4. Coverants of Debtor. So long as any Indebtodness remains uppaid. Debtor: (a) will defend the Collateral and the claims.

Debtor's records concerning the Collateral are kept at the address specified above.

4. Covenants of Debtor. So long as any indebtedness remains unpaid, Debtor: (a) will defend the Collateral around the claims and demands of all other parties including, without limitation, defenses, setotic, claims and counterclaims arounded to any Account Debtor against Debtor and/or Secured Party; will keep the Collateral free from all so undy interests or other encounteral for any nature, as event the country interest; and will not sell, transfer, assign, deliver or otherwise dispose of any claimferal or any interest, and will not sell, transfer, assign, deliver or otherwise dispose of any claimferal or any interest, there is validateral to indicate the Secured Party; (b) will keep, in accordance with generally accepted accounting principles consistently applied, unrate and complete, records concerning the Collateral; at Secured Party's request, will mark all or any such records and all or any such records or any of Debtor's books, ledgers, reports, correspondence and other records: (c) will deep retain a straight upon demand any Claimfer and invoices, simple of delivery receipts, purchase orders, contracts or one of documents, business address, specified above, and of any change in Debtor's because the Collateral or any part thereof; (d) will defend above, at which records concerning the Collateral receipts, excerned Party promptly in writing of any change in Debtor's kept; (e) will notify Secured Party immediately of any default by any Account Debtor in payment or other performance of his obligations or cancellation of, or substitution for, or credits, adjustments or allowances on, any Collateral; (e) in connection herewith, will filing financing statements, assignments and other documents, pay all costs of this securches and as Secured Party any request; (ii) will pay all taxes, assessments and other documents, pay all costs of this securches and as Secured Party's request, will deliver each policy or certificate of insur

5. Verification of Collateral. Secured Party shall have the right to verify all or any Collateral in any manner and through any medium Secured Party may consider appropriate and Debtor agrees to furnish all assistance and information and perform any acts which Secured Party may require in connection therewith.

which Secured Party may require in connection therewith.

6. Notification and Payments. Befora or after any default by Debtor under this Security Agreement, Secured Party may notify all or any Account Debtors of the Security Interest and may also direct such Account Debtors to make all payments on Collateral to Secured Party. All payments on and other Proceeds from Collateral received by Secured Party directly or from Debtor shall be applied to the Indebtedness in such order and manner and at such time as Secured Party shall, in its sole discretion, externally Death shall be applied of Collateral received by Debtor, before or after notification to Account Debtors, shall be held by Debtor in trust for Secured Party in later than the next business day following the day of their receipt. Debtor shall also promptly notify Secured Party of the return to or of the same as Secured Party directs.

7. Default

7. Default.

Any of the following events or conditions shall constitute an event of default hereunder: (i) nonpayment when due, whether by acceleration or otherwise, of principal of or interest on any Indebtedness, or default by Debtor in the performance of any obligation, of any tax imposed on Debtor or on any of Debtor's assacts; (ii) death or judicial declaration of incomputent when due vidual; (iv) the filing by or against Debtor of a petition for adjudication as a bankrupt; the filing by or against Debtor (if an indistortion of a petition for reorganization under Chapter X of the Bankruptcy Act or any similar statute; or the filing by Debtor of a petition for any similar statute; or the filing by Debtor of a petition for the Bankruptcy Act or any similar statute; or the filing by Debtor of a petition for the Bankruptcy Act or any similar statute; or the filing by Debtor of a petition for the Bankruptcy Act or any similar statute; or the filing by Debtor of a petition for the Bankruptcy Act or any similar statute; or the filing by Debtor of a petition for the benefit of creditors; the appointment of a receiver or trustee for Debtor or for any of Debtor's assacts; or the institution by or against

Debtor of any other type of insolvency proceeding (under the Bankruptcy Act or otherwise) or of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of, Debtor; (vi) the occurrence of any event described in paragraph 7 (a) (iii), (iv) or (v) hereof with respect to any indorser or guarantor, or any other party liable for payment, of any indebtedness; ur (vii) if any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of Debtor or any indorser or guarantor, or any other party liable for payment, of any indebtedness, pursuant to or in connection with this Security Agreement or otherwise (including, without limitation, representations and warrantes contained herein), or as an inducement to Secured Party to extend any credit to or to enter into this or any other agreement with Debtor, proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified, or to have omitted any substantial contingent or unliquidated liability or claim against Debtor or any such indorser, guarantor or other party; or if upon the date of execution of this Security Agreement, there shall have been any materially adverse change in any of the facts disclosed by any such certificate, statement, representation, warranty or audit, which change shall not have been disclosed to Secured Party at or prior to the time of such execution.

(b) Secured Party, at its sole election, may declare all or any part of any Indebtedness not payable on demand to be immediately due and payable without demand or notice of any kind upon the happening of any event of default, or if Secured Party In good faith believes that the prospect of payment of all or any part of the Indebtedness or performance of Debtor's obligations under this Security Agreement or any other agreement now or hereafter in effect between Debtor and Secured Party is impaired. The provisions of this paragraph are not intended in any way to affect any rights of Secured Party with respect to any Indebtedness which may now or harmafter by payable on demand to be immediately by applied to the payable on demand to be immediately by a secured Party with respect to any Indebtedness which may now or

hereafter be payable on demand.

(c) Upon the happening of any event of default, Secured Party's rights and remedies with respect to the Collateral shall be those of a Secured Party under the Uniform Commercial Code and under any other applicable law, as the same may from time to time be in effect, in addition to those rights granted herein and in any other agreement now or hereafter in effect between Debtor and

Secured Party.

of sale, disposition or other intended action here under or in connection herewith, whether required by the Uniform Commercial Code or otherwise, shall constitute reasonable notice to Dabtor if such notice is maked by regular or certified man, postage prepaid, at least five (5) days prior to such action, to Debtor's address specified above or to any other address which Debtor has specified in writing to Secured Party as the address to which notices hereunder shall be given to Debtor.

(e) Debtor agrees to pay all costs and expenses incurred by Secured Party in enforcing this Security Agreement, in realizing upon any Collateral and in enforcing and collecting any Indebtedness, including, without limitation, if Secured Party retains counsel for any such purpose, an attorney's fee of 20% of the Indebtedness.

#### 8 Miscellaneous.

(a) Debtor hereby authorizes Secured Party, at Debtor's expense, to file such financing statement or statements relating to the Collateral without Debtor's signature thereon as Secured Party at its option may deem appropriate, and appoints Secured Party as Debtor's attended in fact (without requiring Secured Party) to execute any such financing statement or statements in Debtor's name and to perform all other acts which Secured Party deems appropriate to perfect and continue the Security Interest and to protect and preserve the Collaterat.

(b) Secured Party may demand, collect and sue on the Collateral (in-either Debtor's or Secured Party's name at the latter's option) with the right to enforce, compromise, settle or discharge the Collateral, and may indorse Debtor's name on any and all checks, commercial paper and any other instruments pertaining to the Collateral.

(c) (i) As further security for payment of the Indebtedness, Debtor hereby grants to Secured Party a Security Interest in and lien on any and all property of Debtor which is or may hereafter be in Secured Party's possession in any capacity, including, without limitation, all moneys owed or to be owed by Secured Party to Debtor; and with respect to all of such property. Secured Party shall have the same rights hereinder as it has with respect to the Collateral. (ii) Without limiting any other right of Secured Party, whenever Secured Party has the right to declare any indebtedness to be immediately due and payal at (whether or not it has so declared). Secured Party at its sole election may set off against the indebtedness any and all moneys then owned to Debtor by Secured Party in any capacity, whether or not due, and Secured Party shall be deemed to have exercised such right of scroll immediately at the time of such election even though any charge therefor is made or entered on Secured Party's records such quent thereto.

(d) Upon Debtor's failure to perform any of its defect between the party in the shall not be a sole and any capacity.

(d) Upon Debtor's failure to perform any of its daties hereunder, Secured to the but shall not be obtained to perform any or all such deties, and Debtor shall pay an amount equal to the expense thereof to to coled Party forthact i upon writer i demand by Secured Party.

by Secured Party.

(e) No delay or omission by Secured Party in exercising any right or remedy hereunder or with respect to any Indebtedness shall openede as a waiver thereof or of any other right or remedy. Secured Party may remedy any default to Debtor to enude or with respect to any Indebtedness in any reasonable manner without wairing the default remedied and without there, any other prior or subsequent default by Debtor. All rights and remedies of Secured Party hereunder are cumulative.

(f) Secured Party shall have no obligation to take, and Debtor shall have the sole responsibility to the age, any and all prior parties to any instrument or Chattel Paper constituting containing the entry's failure to enforce any Collateral or to collect any moneys due or to become due thereunder, or other Proceeds consistency Collateral hereunder. Debtor waives protest of any Instrument constituting Collateral at any time held by Secured Party on which Debtor is in any way hable and waives notice of any other action taken by Secured Party.

(g) The rights and benefits of Secured Party hereunder shall, if Secured Party so agrees, inure to any party acquiring any interest in the Indebtedness or any part thereof.

interest in the Indebtedness or any part thereof.

Secured Party and Debtor as used herein shall include the heirs, executors or administrators, or successors or assigns, (h) of those parties.

(i) If more than one Debtor executes this Security Agreement, the term "Debtor" shall include each as well as all of them and their obligations, warranties and representations hereunder shall be joint and several.

(j) No modification, rescission, waiver, release or amendment of any provision of this Security Attreement shall be made except by a written agreement subscribed by Debtor and by a duly authorized officer of Secured Party.

(k) This Security Attreement and the transaction evidenced hereby shall be construed under the Live. of New York State, as the same may from time to time be in effect, including, without limitation, the Uniform Commercial Code.

(I) This Security Agreement is and is intended to be a continuing Security Agreement and shall remain in full force and effect until the Manager of Secured Party's Office specified at the beginning of this Security Agreement shall containly receive written notice of its discontinuance; and shall remain in full force and effect thereafter until all of the Indebtedness contracted for or created before the receipt of such notice by Secured Party, and any extensions or remewals thereof (whether made before or after receipt of such notice) together with interest accruing thereon after such notice, shall be and in full.

SCHEDULE A
Rigging Equipment

ITEM	NUMBER PIECES	DESCRIPTION	VALUE
1	2 BINS.	STEEL ROLLERS	\$ 500.00
2	3 BINS.	ROPES, BELTS & PULLEYS	1,200.00
3	2	BANDING MACHINE	100.00
4	2 BINS.	STEEL CABLE & CHAIN	1,000.00
5	10	CAT DOLLIES	2,000.00
6	15	JACKS	1,500.00
7	10.	SAFE JACKS & BOARDS	1,000.00
8	10	JOHNNY BARS	500.00
9	2 BINS.	BLOCKING & TACKLE	1,000.00
10	2	CHEST OF TOOLS	2,00.00
11	2 BINS.	SLINGS, STRAPS & WEBS .	200.00
12	5	HOOK PLANKS	100.00
13	4	HOIST.	400.00
14	4	WALK BOARDS	400.00
15	4	CHAIN BINDERS	100.00
16	3 BINS.	STEEL BARS	300.00
17	100	WOOD MACHINE ROLLERS	500.00
18	40	ASSORTED WOOD TIMBERS TOTAL VALUE	200.00

SCHEDULE B Moving Equipment

ITEM	NUMBER FIECES	DESCRIPTION	VALUE
1	40	FURNITURE CONTAINERS (\$50/ea.)	32,000.00
2	150	TOTE BOXES (\$5/ea.)	750.00
3	8	REEFER DOLLIES (\$50/ea.	400.00
4	80	FURNITURE DOLLIES (\$18/ea.)	1,440.00
5	600	FURNITURE PADS & SKINS (\$4/ea.)	2,400.00
6	6	WALK BOARDS (\$150 co.)	900.00
7	8 .	PIANO POARDS (\$4 c) TOTAL VALUE	30,5%0.00

# SCHEDULE C TRAILERS & VEHICLES

ITEM	DESCRIPTION	VALUE
739	1969 BROWN TRAILER ID# R696458C	\$ 2,000.00
T57	1964 STRICK TRAILER ID# D58408	500.00
T56	1967 FRUEHAUF TRAILER ID# HFG100190	1,000.00
T18	1970 FRUEHAUF FLATBED TRAILER (REPUBLIC RENTAL) ID# WEM158301	3,000.00
3.1	1970 INTERNATIONAL STAKE PICKUP (REPUBLIC RENTAL) ID# 317301H0447	2. 10.00
32	1968 DIAMOND REO VAN (REPUBLIC ENTAL) ID# DRA42BC101586 TOTAL VALUE	3,000.00 \$11,50.00

COPY	COPY	COPY	COPY	Jution of	Use By Recording Office .
Form 668	DEPAREMENT OF THE	LIEN UNDER INTERNAL S	REVERUÉ LAWS		ose at necurany once
STRICT	* * * . * .	SERIAL NUMBER			
Buffalo,	NY	16-15-75-529			
Pursuant to the povis	ions of Sections 6321	,6322, and 6323 of the	Internal Revenue		
ode, notice is hereby	given that there hav	e been assessed under illowing-named taxpaye	the internal Keve-	**	
nterest and penalties	which after demand	for payment theroof re	main unpaid, and		and the second
hat by the of the above and	ove-mentioned statut	estine amount of said to e In addition thereto, Is	a lien in favor of		
he United States upon	all property and right	sto property belonging	to said taxpayer.		
AME OF TAXPAYER		· 4 - 2 * 4 *	. 7		
Wm B Duffy (	Carting Co. Inc.	(A Corp)		W	
ESIDENCE	di bing oot into	(п. 50-Р)		1	
342 Whitney	St. New York 1,606			8 g :	
1001100111			1 1 1 1 1 1 1 1	.1.	UNPAID BALANCE
KIND OF TAX	TAX PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING	NOWBER	(F ASSESSMENT
(0)	7-1 1. "H' 1"		There is		
941	7403	08-15-74	16-0795879		\$ 42,489.35
941	7406	08-15-74	1		33,248.55
2290	7406	11-11-74			1,469.21
2290	7506	11-11-74	1		1,4,4,10
	1. 1. 1. 2. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1.	4	11 1 1	111:	
	1. 7.67 (1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1	DIL	V. V /	1//	
6	ACKNOWLEDG	D BY: // the 11/	1. Schmi	Manny	1
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	FOR:	13.1.1.			
A STATE OF THE STATE OF	1 (Ch. ) ( )	3.			
	1.000	1 1			1
Comment of		7/10/74	+	•	l'o
	DATE:	4/10/10	-		1
		/ /			
LACE OF FILING	Ontoinal	filed on 1-21-75	erith .		
A CALL POR	Monroe Co	unty Clerk	M_CII	JOIAL	\$ 78,681.29
17.25		, New York			
The Company of the Control	3.247 311	The same of the	· · · · · · · · · · · · · · · · · · ·	* * .	
1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1					
VITNESS my hand at	- Ro	chester, New York			on th
	1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1	1 163/2 - 200 1			·
La 21st day of	Jan. 19 7	5			
4 (1) 1-7	Vive Will	Grand Control			
SIGNATURE		TITLE TITLE	E		
, 414 A		territoria de la companya della companya della companya de la companya della comp	Revenue Offi		
/s/ R.S. Campbe	77		D OCC	000	

PART 1—To be retained by recording office

1

Ferm 668-8

Internal Revenue Service

Levy

Due from

Wm B Duffy Carting Co. Inc. 342 Writney St. Rochester, New York

Originating Internal Revenue Districe (City, and State)

Buffalo, New York



Tax period anded	Date of assessmen	dentifying number	Unpaid balance of assessment	Statutory additions	Total
6-30-74 3-31-74 6-30-74 6-30-75	8-15-74 8-15-74, 11-17-74,	16-0795879	33,248.55 42,501.35 1,311.49 1,474.18	3302.51 3688.27 61.68 69.62	36,551.06 46,189.62 1,373.17 1,543.80
					· .
				- \	
	6-30-74 3-31-74 6-30-74 6-30-75	6-30-74 8-15-74 3-31-74 8-15-74 6-30-75 11-12-75	6-30-74 8-15-74 16-0795879 3-31-74 8-15-74 16-30-75 71-15-74 11-15	Tax period anded Date of assessment number belance of assessment  6-30-74 8-15-74 8-15-74 8-15-74 8-15-74 11-274 1	Tox period 3nded  Date of assessment number  6-30-74  3-31-74  6-30-74  6-30-74  11-27  6-30-75  Date of number number  16-0795879  16-0795879  17-07  16-0795879  17-07  17-07  17-07  17-07  17-07  18-11-17  18-11-17  19-11-17

There is now due, owing, and unpaid with respect to the above-named account the amounts set forth herein for internal revenue taxes for which notice and demand has been made for payment. Section 63-1, Internal Revenue Code, authorizes collection of taxes by levy upon all property or rights to property of a taxpayer (except property that is exempt under section 6334) or on which the lien provided by section 6321 exists. Therefore, under the provisions of section 6331, so much of the property or rights to property, either real or personal, as may be necessary to satisfy, the unpaid balance of assessment set forth herein together with additions provided by law, including fees, costs, and expenses of this levy, are hereby levied upon in order to satisfy the taxes and additions.

Deted at Rochester, - New -York	this JOth day of - April 19 75 -
Dept A Vilalne	Revenue Officer
11 11 11	Form 668-B (Part2) (Rev. 12-73)

Levy

Wan B Duffy Carting Co. Inc 342 Whitney St. Rochoster, N.Y. 14605

Originating Internal Revenue District (City and State)

Buffflo, New York

Kind of	Tax period ended	Date of assessment	Identifying number	Unpaid balance of assessment	Statutory additions	Total
877 877 877	03-31p74 05-30-74 09-30-74	08-75-74 03-15-74 03-24-75	16-0795879	\$ 32,086.12 33,240.55 674.20	4,116.17 3,524.50 (ID.11)	\$ 36,902.29 36,773.05 685.31
				•	•	
		` .				
	•					

Total Amount Due > | 5 74,320.55

There is now due, owing, and unpaid with respect to the above-named account, the amounts set forth herein for internal revenue taxes for which notice and demand has been made for payment. Section 6331, Internal Revenue Code, authorizes collection of taxes by levy upon all property or rights to property of a taxpayer force; property that is exempt under section 6334) or on which the lien provided by section 6321 exists. Therefore, a certific provisions of section 6331, so much of the property or rights to property, either real or personal, as may be necessary to satisfy the unpaid balance of assessment set forth herein together with additions provided by law, including fees, costs, and expenses of this levy, are hereby levied upon in order to satisfy the taxes and additions.

Doted a ROchester, N.Y.	19th	Mas loy of	75
Deph A Vitaline	Rovenue Officer		
// 0		Lorm 663 8 (Part	2) (Rev. 1-75)

COPY TO BE FURNISHED TO THE TAXPAYER

Alexandra Maria

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**. <b>.</b>	* / * 1	e .		. 13			
	Form 668-E		U. S. TREASURY DE				
	(REV. MAY 1967)		RE	LEASE OF LE	VY		1
		ya B Diffy Carting 342 Whitney St. Rochester, N.Y.	Co Inc				
	On the_	74th day of Apr	.11	19 <u>75</u> , certain	property or re-	hts to property	belong-
•	ing to the abov	e-named taxpayer were l	evied upon pursuan	t to levy dated_	April 10,		19 75
	Under the	provisions of section 6	343 of the Internal	Revenue Code,	the following prop	erty or rights to	property ,
	ea 1 19 ea 1 19 ea 1 19 ea 1 Cy es 1 Tr	osed from the levy upon 55 International F 58 Diamond Red Tra 70 Int. Earveater clinder Oxygen milmobile Trailer	larvester Tract actor ID 565000 Van flul6000 DD	57686	hh38Inap. Cart	. #18002 <b>51</b>	
	0a 2	ilmobile Trailer	(Cold & White)	NY Lic #Ett	1436 Insp. Cer	·t. \$4800252	•
							<b>a</b>
			/				
_							
		ester, M.Y.	this_	lith	_day_ot		75
	CONATURE OF THE	Vitalia		Rovenue 01	ficer		;
-	1		A:		1.	<b>г</b> ≿ам 668-Е (	REV. 5.67)

# RECEIPT FOR PROPERTY RETURNED UNDER RELEASE OF LEVY

I hereby acknowledge receipt of the property or rights to property as enumerated an idescribed on the reverse, and I accept such property as being in the same condition as when seized. Further, I warre all claims against the United States for any damages or expenses incurred in connection with this seizure.

Dated at Ruchaster, No	this 15 th day of 7770 , 1975.
Kota H. Lumichanne	1, Sec. of Wor. B. Droffy to iting to
In the Presence of:	1 the string of
Joseph Wilalan	700 State It Workstee, ny.
Parth felico	100 SIME ST, LOCK - Mry

#### INTERNAL REVENUE CODE

#### SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.

(a) Release of Levy.—It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Decemberry or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

#### SEC. 6502. COLLECTION AFTER ASSESSMENT.

- (a) Length of Period.—Where the assessment of my fix times the fittle has been made as a the Lordod of limitation properly applicable thereto, such tax may be collected by tryy in proceeding in court, but may if the levy is made or the proceeding begin—
  - (1) within 6 years after the assessment of the tax, or
  - (2) prior to the expiration of any period for collection agreed upon in writing by the Secretary or his delegate and the taxpayer before the expiration of such 6-year period for, if there is a release of levy under section wi43 after such 6-year period, then before such release).

The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) Date When Lavy is Considered Made.—The date on which a levy on property or rights to property is made shall be the date on which the notice of soizure provided in section 6335(a) is given.

### DESCRIPTION OF PROPERTY

# WM B DUFFY CARTING COMPANY INC.

NUME		DESCRIPTION:
KON		
1	. ea. 1	H17 1969 StepVan PS359F866297, Chevrolet
2	ea. 1	1965 International Harvester Tractor, #FD 19874G Barry
3	ea. 1	Ehl -1968 Diamond Red Tractor 10565006 (Se)
4	ea. 1	1970 Int. Harvester Van #416060CD57686 (33)
. 5	ca. 1	70 - 1963 White, Tractor #649478
· 5 6 7	ea. 1	1.77 7.1
7	ea. 1	CMC EECO VO: WETEOMOSEROF
8	·ca. 1	Townotor Ser #354911 Model T35F
9	ea. 1	Townotor
10		15. NON NOTE NOTE NOTE NOTE NOTE NOTE NOTE
11	ea. 1	Fork Lift, Electric Ser #154834
. 12	ea. 1	Tow Bar, Tractor
	ea. 1	Counter, Kitchen w/sink cut out approx. ? feet
13	ea. 2	Rack, metal including miscel. nuts 4 bolts
14	ea. 1	Desk, wooden
15	ea. 19	
16 .	ea. 2	Tank, Air
	ea. 4	Vent, Side Truck part 475434
	box 1	Carbuerators, ea. 5, Starter, ea. 1
17	ea. 1	Rack, incluing contents: (il Filters, Headlamps,
		Seatbelte, Puelpumps 8, Vivelts
19	ea. 1	
		Air Filters Miscel. Filters, Cil Filters
19	ea. 1	Rack, Miscel parts; Valv , Seils
20	ca. 1-	
21	ea. 1	Rack, including Paint, he t Aimer
22	ea. 1	Cyclinder Oxygen.
: 4	ea. 1	Rack, with oil folter and odd items
24	ca. 1	Rack, including Air Strainer, Exhaust Acc so ry, # .070;
		stop & tarilar ca. 10, flacher & 15, Matter Cyclinder 467641
55	ea. 1	Rock, including Single Stat ca. 80, Head amps es. 7
2.6	ea. 7	Seats, Truck
27	ea. 1	
28	ea. 1	Miscel. Lot including tailpipes, used tires, used parts Cabinet, Rod Metal
29	box 1	
10		light bulbs, 750 Watt
	63. 1	Lot includes Power Beam ea. 4; All purp se Clamp ea. 6;
		Bower Bearing ea. 1; Single Stat ea. 14, 50 IRIT Sandpaper,
		ea. 15; Oil Scals 2 boxes; Enging Starting Fluid 1 case;
		Headlamps ca. 5
31	2	Tan Metal Tables
32	5.	Chairs
33 .	1	Floursecent Table lamp
34	1	Smith Corona Typewriter #PC512 314-15
35	1	Brown File

### DESCRIPTION OF PROPERTY

### WM B DUFFY CARTING COMPANY INC.

DESCRIPTION			mi B Bott Continue Contain Inc.
DESCRIPTION	TMES		
ea. 1			
ea. 1	NUME	BER	DESCRIPTION
ea. 1 1965 International Harvester Tractor, #FDB987.0  ea. 1 1968 Diamond Red Tractor ID565006  ea. 1 1960 Int. Harvester Van #A16060057686  ea. 1 1961 International Van FERIZOAF  ea. 1 1962 White, Tractor #616478  ea. 1 1963 White, Tractor #616478  ea. 1 1963 White, Tractor FERIZOAF  ea. 1 1964 International Van FERIZOAF  ea. 1 1964 International Van FERIZOAF  ea. 1 1965 International Van FERIZOAF  ea. 1 1966 Million FERIZOAF  ea. 1 1966 Million FERIZOAF  ea. 1 1968 White, Tractor White,			
a ea. 1 1965 International Harvester Tractor, #FD8937.G  a ea. 1 1968 Diamond Red Tractor ID565006  b ea. 1 1960 International Van FB2120/F  c ea. 1 1961 International Van FB2120/F  c ea. 1 1961 International Van FB2120/F  c ea. 1 1965 International Van FB2120/F  c ea. 1 2 2 3 3 3 4 3 3 3 4 3 3 4 3 3 4 3 3 4 3 3 4 3 3 4 3 3 4 3 3 4 3 3 4 3 3 4 3 5 3 4 3 5 3 4 3 5 3 4 3 5 3 4 3 5 3 4 3 5 3 4 3 5 3 4 3 5 3 4 3 5 3 4 3 4		ea. 1	1969 StepVan PS359F866287, Charmol et
ea. 1 1968 Diamond Red Tractor ID565006  4 ea. 1 1970 Int. Harvester Van #L16060CD57686  5 ea. 1 1963 Maite, Tractor #649478  6 ea. 1 1963 Maite, Tractor #649478  7 ea. 1 1961 International Van FE2120AF  8 ea. 1 1961 International Van FE2120AF  9 ea. 1 1962 Cox 2nd #75700D2582E  8 ea. 1 1961 International Van FE2120AF  10 ea. 1 1962 Tommotor Ser #354911 Model T35F  10 ea. 1 1968 Diamond Red Tractor  10 ea. 1 1963 Maite, Tractor Ser #154834  11 ea. 1 1968 Diamond Red Tractor Ser #354911 Model T35F  12 ea. 1 1968 Diamond Red Tractor Ser #354911 Model T35F  13 ea. 1 1968 Diamond Red Tractor Ser #154834  14 ea. 1 1961 International Van FE2120AF  15 ea. 1 2 2 3 4 4 4 5 4 5 4 5 4 5 4 5 4 5 4 5 4 5 4	2	ea. 1	1965 International However or Treater (Treater
Townstor  ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 1  17 ea. 1  18 ea. 2  19 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 Rack, including contents; Oil Fiters, Headlamps, Seatbelts, Fuelpumps 8, V Belts  19 ea. 1  10 ea. 1  11 Rack, including contents; Warn Alaim for trucks, ea.6;  11 Air Filters Miscel. Filters, Oil Filters  12 ea. 1  13 ea. 1  14 Rack, including Miss Ismps, Valves Truckparts  15 ea. 1  16 ea. 1  17 ea. 1  18 Rack, including Miss Ismps, Valves Truckparts  19 ea. 1  10 Rack, with oil filter and of items  10 Rack, including Air Strainer, Exhaust Accessory, #L076;  10 stop & taillamp ea. 10, flasher an 15, Merter Cyclinder 367641  10 Rack, including Single Stat ca. 80, Headlamps ea.  10 Seats, Truck  10 Paint of the state o			1069 Discould harvester Tractor, #FD8987G
Townstor  ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 1  17 ea. 1  18 ea. 2  19 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 Rack, including contents; Oil Fiters, Headlamps, Seatbelts, Fuelpumps 8, V Belts  19 ea. 1  10 ea. 1  11 Rack, including contents; Warn Alaim for trucks, ea.6;  11 Air Filters Miscel. Filters, Oil Filters  12 ea. 1  13 ea. 1  14 Rack, including Miss Ismps, Valves Truckparts  15 ea. 1  16 ea. 1  17 ea. 1  18 Rack, including Miss Ismps, Valves Truckparts  19 ea. 1  10 Rack, with oil filter and of items  10 Rack, including Air Strainer, Exhaust Accessory, #L076;  10 stop & taillamp ea. 10, flasher an 15, Merter Cyclinder 367641  10 Rack, including Single Stat ca. 80, Headlamps ea.  10 Seats, Truck  10 Paint of the state o	1.		1900 Diamond Red Tractor 10565006
Townstor  ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 1  17 ea. 1  18 ea. 2  19 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 Rack, including contents; Oil Fiters, Headlamps, Seatbelts, Fuelpumps 8, V Belts  19 ea. 1  10 ea. 1  11 Rack, including contents; Warn Alaim for trucks, ea.6;  11 Air Filters Miscel. Filters, Oil Filters  12 ea. 1  13 ea. 1  14 Rack, including Miss Ismps, Valves Truckparts  15 ea. 1  16 ea. 1  17 ea. 1  18 Rack, including Miss Ismps, Valves Truckparts  19 ea. 1  10 Rack, with oil filter and of items  10 Rack, including Air Strainer, Exhaust Accessory, #L076;  10 stop & taillamp ea. 10, flasher an 15, Merter Cyclinder 367641  10 Rack, including Single Stat ca. 80, Headlamps ea.  10 Seats, Truck  10 Paint of the state o	=		1970 Int. Harvester Van #416060CD57686
Townstor  ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 1  17 ea. 1  18 ea. 2  19 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 Rack, including contents; Oil Fiters, Headlamps, Seatbelts, Fuelpumps 8, V Belts  19 ea. 1  10 ea. 1  11 Rack, including contents; Warn Alaim for trucks, ea.6;  11 Air Filters Miscel. Filters, Oil Filters  12 ea. 1  13 ea. 1  14 Rack, including Miss Ismps, Valves Truckparts  15 ea. 1  16 ea. 1  17 ea. 1  18 Rack, including Miss Ismps, Valves Truckparts  19 ea. 1  10 Rack, with oil filter and of items  10 Rack, including Air Strainer, Exhaust Accessory, #L076;  10 stop & taillamp ea. 10, flasher an 15, Merter Cyclinder 367641  10 Rack, including Single Stat ca. 80, Headlamps ea.  10 Seats, Truck  10 Paint of the state o	2		1963 White, Tractor #649478
Townstor  ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 1  17 ea. 1  18 ea. 2  19 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 Rack, including contents; Oil Fiters, Headlamps, Seatbelts, Fuelpumps 8, V Belts  19 ea. 1  10 ea. 1  11 Rack, including contents; Warn Alaim for trucks, ea.6;  11 Air Filters Miscel. Filters, Oil Filters  12 ea. 1  13 ea. 1  14 Rack, including Miss Ismps, Valves Truckparts  15 ea. 1  16 ea. 1  17 ea. 1  18 Rack, including Miss Ismps, Valves Truckparts  19 ea. 1  10 Rack, with oil filter and of items  10 Rack, including Air Strainer, Exhaust Accessory, #L076;  10 stop & taillamp ea. 10, flasher an 15, Merter Cyclinder 367641  10 Rack, including Single Stat ca. 80, Headlamps ea.  10 Seats, Truck  10 Paint of the state o	0	ea. 1	1961 International Van FB2120AF
Townstor  ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 1  17 ea. 1  18 ea. 2  19 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 ea. 1  12 ea. 1  12 ea. 1  13 ea. 2  14 ea. 1  15 ea. 19  16 ea. 2  17 ea. 1  18 ea. 1  19 ea. 1  10 ea. 1  10 ea. 1  11 Rack, including contents; Oil Fiters, Headlamps, Seatbelts, Fuelpumps 8, V Belts  19 ea. 1  10 ea. 1  11 Rack, including contents; Warn Alaim for trucks, ea.6;  11 Air Filters Miscel. Filters, Oil Filters  12 ea. 1  13 ea. 1  14 Rack, including Miss Ismps, Valves Truckparts  15 ea. 1  16 ea. 1  17 ea. 1  18 Rack, including Miss Ismps, Valves Truckparts  19 ea. 1  10 Rack, with oil filter and of items  10 Rack, including Air Strainer, Exhaust Accessory, #L076;  10 stop & taillamp ea. 10, flasher an 15, Merter Cyclinder 367641  10 Rack, including Single Stat ca. 80, Headlamps ea.  10 Seats, Truck  10 Paint of the state o	7	ea. 1	GMC 5500 Van #5750VD2582F
Townstor  10 ea. 1 11 ea. 1 12 ea. 1 13 ea. 1 14 ea. 1 15 Fork Lift, Electric Ser #154834 15 ea. 1 16 ea. 1 17 w Bar, Tractor 17 can. 1 18 ea. 2 19 Mafflers, Tractor, Truck 18 ea. 1 19 Mafflers, Tractor, Truck 19 Truck part 475434 10 ea. 1 10 ea. 1 11 Ea. 1 12 ea. 1 13 ea. 2 14 Vent, Side Truck part 475434 15 ea. 1 16 ea. 1 17 ea. 1 18 ea. 1 19 Ea. 1 19 Ea. 1 10 Ea. 1 11 Eack, including contents: Oil Titers, Headlamps, Seatbelts, Fuelpumps 8, V Belts 19 Ea. 1 10 Ea. 1 11 Eack, Miscel parts; Valves, Seals 19 Ea. 1 10 Ea. 1 11 Eack, Miscel parts; Valves, Seals 19 Ea. 1 10 Ea. 1 11 Eack, Miscel parts; Valves, Seals 10 Ea. 1 11 Eack, Miscel parts; Valves, Seals 11 Eack, including Painc, Headlamps, Valves Truckparts 12 Ea. 1 13 Eack, including Air Strainer, Examst Accessory, #4,076; 19 Ea. 1 10 Ea. 1 11 Eack, including Air Strainer, Examst Accessory, #4,076; 10 Ea. 1 11 Eack, including Single State. 20, Headlamps ea. 12 Ea. 1 13 Eack, including tailpipes, used tires, used parts 14 Eack, including tailpipes, used tires, used parts 15 Eack Includes Power Beam ea. 4; All purpose Clamp ea. 6; 16 Each Each Metal 17 Each Metal 18 Each Each Each Each Each Each Each Each	8	ea. 1	Townston San #351011 Madel mass
10 ea. 1 11 ea. 1 12 ea. 1 13 ea. 2 14 ea. 1 15 ea. 2 16 ea. 1 17 cas. 1 18 ea. 2 19 Mafflers, Tractor, Truck 110 ea. 1 11	9	ea. 1	Townston Ber #5544II Model 155F
11 ea. 1 12 ea. 1 13 ea. 2 14 ea. 1 15 ea. 2 14 ea. 1 15 ea. 19 16 ea. 2 17 ea. 1 17 ea. 1 18 18 19 10 10 11 11 11 11 11 11 11 11 11 11 11			
12 ea. 1 13 ea. 2 14 ea. 1 15 ea. 2 16 ea. 2 17 ea. 19 18 ea. 2 19 ea. 4 19 ea. 1 19 ea. 19 10 ea. 2 11 ea. 1 11 ea. 1 12 ea. 1 13 ea. 2 14 ea. 1 15 ea. 19 15 ea. 2 16 ea. 2 17 ea. 1 17 ea. 1 18 ea. 1 19 ea. 1 19 ea. 1 10 ea. 1 10 ea. 1 11 ea. 1 12 ea. 1 13 ea. 1 14 ea. 1 15 ea. 1 15 ea. 1 16 ea. 2 17 ea. 1 17 ea. 1 18 ea. 1 19 ea. 1 10 ea. 1 10 ea. 1 11 ea. 1 12 ea. 1 12 ea. 1 13 ea. 1 14 ea. 1 15 ea. 1 16 ea. 1 17 ea. 1 18 ea. 1 19 ea. 1 10 ea. 1 10 ea. 1 11 ea. 1 12 ea. 1 12 ea. 1 13 ea. 1 14 ea. 1 15 ea. 1 16 ea. 1 17 ea. 1 18 ea. 1 19 ea. 1 10 ea. 1 11 ea. 1 12 ea. 1 12 ea. 1 13 ea. 1 14 ea. 1 15 ea. 1 16 ea. 1 17 ea. 1 18 ea. 1 19 ea. 1 10 ea. 1 11 ea. 1 12 ea. 1 12 ea. 1 13 ea. 1 14 ea. 1 15 ea. 1 16 ea. 1 17 ea. 1 18 ea. 1 19 ea. 1 10 ea. 1 11 ea. 1 11 ea. 1 11 ea. 1 12 ea. 1 12 ea. 1 13 ea. 1 14 ea. 1 15 ea. 1 16 ea. 7 17 ea. 1 17 ea. 1 18 ea. 1 19 ea. 1 10 ea. 1 11 ea. 1 12 ea. 1 12 ea. 1 13 ea. 1 14 ea. 1 15 ea. 1 16 ea. 7 17 ea. 1 17 ea. 1 18 ea. 1 19 ea. 1 10 ea. 1 10 ea. 1 11 ea. 1			Fork Lift, Electric Ser #154834
Counter, Althem Wysink cut out approx. 8 feet Rack, metal including miscel. muts 4 bolts Desk, wooden Mafflers, Tractor, Truck ea. 1 Desk, wooden Mafflers, Tractor, Truck Tank, Air ea. 4 Vent, Side Truck part 475434 Carbuerators, ea. 5, Starter, ea. 1 Rack, including contents: Oil Filters, Headlamps, Seatbelts, Fuelpumps 8, V Belts Rack, including contents: Warn Alaim for trucks, ea.6; Air Filters Miscel Filters, Oil Filters Rack, Miscel parts; Valves, Soals Rack, including Misr Lamps, Valves Truckparts Rack, including Paint, Headlight Aimer Oyclinder Oxygen Rack, with oil filter and of items Rack, including Air Strainer, Exhaust Accessory, #4076; stop & taillamp ea. 10, flasher &a 15, Mester Cyclinder 367641 Rack, including Single Scat ca. 80, Headlamps ea. Rack, including tailpipes, used tires, used parts Cabinet, Red Metal Light bulbs, 750 Watt Light bulbs, 750 Watt Light bulbs, 750 Watt Lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 14, 50CRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Storting Fluid 1 case; Headlamps ea. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5120014-15			Tow Bar, Tractor
Hack, metal including miscel. nuts 4 bolts  lea. 1  lea. 1  lea. 19  Mufflers, Tractor, Truck  ea. 4  vent, Side Truck part 475434  carbuerators, ea. 5, Starter, ea. 1  Rack, including contents: Oil Filters, Headlamps,  Seatbelts Fuelpumps 8, V Belts  Rack, including contents: Warn Alaim for trucks, ea.6;  Air Filters Miscel. Filters, Oil Filters  Rack, including Misc Lamps, Valves Truckparts  Rack, including Paint, Headlight Aimer  Rack, including Paint, Headlight Aimer  Rack, including Nisc Strainer, Exhaust Accessory, #LO76;  stop & taillump ea. 10, flasher an 15, Me ter Cyclinder 367641  Rack, including Single Stat ca. 80, Headlamps ea.  Rack, including Single Stat ca. 80, Headlamps ea.  Seats, Truck  Miscel. Lot including tailpipes, used tir s, used parts  Cabinot, Red Metal  Light bulbs, 750 Watt  Lot includes Power Beam ea. 4; All purpose Clamp ea. 6;  Bower Bearing ea. 1; Single Stat ea. 11, 50GRIT Sandpaper,  ea. 15; Oil Scals 2 boxes; Enging Starting Fluid 1 case;  Headlamps ea. 5  Tan Metal Tables  Chairs  Floursecent Table lamp  Smith Corona Typewriter #PC5100014-15		ea. 1	Counter, Kitchen W/sink cut out approx. 8 feet
Desk, woden    Sea. 19		ea. 2	Rack, metal including miscel, misch bolts
Mufflers, Tractor, Truck  ea. 2  ea. 4  box 1  Carbuerators, ea. 5, Starter, ea. 1  Rack, including contents: Oil Tilters, Headlamps,  Seatbelts Fuelpumps 8, V Belts  Rack, including contents: Warn Alaim for trucks, ea.6;  Air Filters Miscel. Filters, Oil Filters  Rack, including Misr Lamps, Valves Truckparts  Rack, including Paint, Headlight Aimer  Cyclinder Oxygen  Rack, with oil filter and of items  Rack, including Air Strainer, Exhaust Accessory, #LO76;  stop & taillamp ea. 10, flasher & 15, Merter Cyclinder 367641  Rack, including Single Stat ea. 80, Headlamps ea.  Seats, Truck  Miscel. Lot including tailpipes, used tires, used parts  Cabinet, Red Metal  Light bulbs, 750 Watt  Lot includes Power Beam ea. 4; All purpose Clamp ea. 6;  Bower Bearing ea. 1; Single Stat ea. 14, 50cRIT Sandpaper,  ea. 15; Oil Scals 2 boxes; Enging Sterting Fluid 1 case;  Headlamps ea. 5  Tan Metal Tables  Chairs  Floursecent Table lamp  Smith Corona Typewriter #PC5120014-15		ea. 1	Desk - wooden
Tank, Air  ea. 1	15	ea. 19	
ea. 1 box 1 carbuerators, ea. 5, Starter, ea. 1 Rack, including contents: Oil Titers, Headlamps, Seatbelts, Fuelpumps 8, V Belts Rack, including contents: Warn Alana for trucks, ea.6; Air Filters Miscel. Filters, Oil Filters Rack, Miscel parts; Valves, Seals Rack, Miscel parts; Valves, Seals Rack, including Paint, Headlight Aimer Cyclinder Oxygen Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher in 15, Marter Cyclinder 367641 Rack, including Single Stat ca. 80, Headlamps ea. Seats, Truck Miscel. Lot including tailpipes, used tires, used parts Cabinet, Red Metal Light bulbs, 750 Watt Lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper, ea. 15; Oil Scals 2 boxes; Enging Starting Fluid 1 case; Headlamps ea. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #FC5120014-15	16		Marie 1, Iractor, Irack
carbuerators, ea. 5, Starter, ea. 1 Rack, including contents: Oil Tilters, Headlamps, Seatbelts, Fuelpumps 8, V Belts Rack, including contents: Warn Alaim for trucks, ea.6; Air Filters Miscel. Filters, Oil Filters Rack, including Misr Lamps, Valves Truckparts Rack, including Paint, Headlight Aimer Cyclinder Oxygen Rack, with oil filter and of items Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher &n 15, Me ter Cyclinder 367641 Rack, including Single Stat ca. 80, Headlamps ea. Rack, including tailpipes, used tires, used parts Cabinet, Red Metal Light bulbs, 750 Watt Lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 11, 50GRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Sterting Fluid 1 case; Headlamps ea. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5120014-15			Tank, Air
Carbucrators, ea. 5, Starter, ea. 1 Rack, including contents: Oil Filters, Headlamps, Seatbelts, Fuelpumps &, V Belts Rack, including contents: Warn Alaim for trucks, ea.6; Air Filters Miscel. Filters, Oil Filters ea. 1 Rack, Miscel parts; Valves, Seals Rack, Miscel parts; Valves, Seals Rack, including Misc I Lamps, Valves Truckparts Rack, including Palme, Headlight Aimer Cyclinder Oxygen Rack, with oil filter and of items Rack, including Air Strainer, Exmaust Accessory, #LO76; stop & taillamp ea. 10, flasher & 15, Merter Cyclinder 367641 Rack, including Single Seat ca. 80, Headlamps ea. Seats, Truck Miscel. Lot including tailpipes, used tires, used parts Cabinet, Red Metal Light bulbs, 750 Watt Lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 14, 50CRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Sterting Fluid 1 case; Headlamps ea. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5120014-15			Vent, Side Truck part 475434
Rack, including contents: Oil Filters, Headlamps, Seatbelts Fuelpumps 8, V Belts Rack, including contents: Warn Alaim for trucks, ea.6; Air Filters Miscel. Filters, Oil Filters Rack, Miscel parts; Valves, Seals Rack, Miscel parts; Valves, Seals Rack, including Misc. Lamps, Valves Truckparts Rack, including Paine, Headlight Aimor Cyclinder Oxygen Rack, with oil filter and of items Rack, including Air Strainer, Exnaust Accessory, #LO76; stop & taillomp ea. 10, flasher &a 15, Marter Cyclinder 367641 Rack, including Single Seat ea. 80, Headlamps ea. Rack, including Single Seat ea. 80, Headlamps ea. Rack, includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Sterting Fluid 1 case; Headlamps ea. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5100014-15	10		Carbuerators, ea. 5. Starter, ea. 1
Seathelts, Fuelpumps 8, V Belts  Rack, including contents: Warn Alana for trucks, ea.6; Air Filters Miscel. Filters, Oil Filters  Rack, Miscel parts; Valves, Seals  Rack, including Misc. Lamps, Valves Truckparts  Rack, including Paine, Headlight Aimer  Cyclinder Oxygen  Rack, with oil filter and of items  Rack, including Air Strainer, Exhaust Accessory, #4076;  stop & taillomp ea. 10, flasher & 15, Mester Cyclinder 367641  Rack, including Single Seat ca. 80, Headlamps ea.  Rack, including Single Seat ca. 80, Headlamps ea.  Seats, Truck  Miscel. Lot including tailpipes, used tires, used parts  Cabinet, Red Metal  Light bulbs, 750 Watt  Lot includes Power Beam ea. 4; All purpose Clamp ea. 6;  Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper,  ea. 15; Oil Seals 2 boxes; Enging Sterting Fluid 1 case;  Headlamps ea. 5  Tan Metal Tables  Chairs  Floursecent Table lamp  Smith Corona Typewriter #PC5120014-15	11	ea. 1	Rack, including contents: Oil Filters, Headlamps
Rack, including contents: Warn Alaim for trucks, ea.6; Air Filters Miscel Filters, Oil Filters  Rack, Miscel parts; Valves, Seals  Rack, Miscel parts; Valves, Seals  Rack, including Miscel Lamps, Valves Truckparts  Rack, including Paine, Headlight Aimer  Cyclinder Oxygen  Rack, with oil filter and of items  Rack, including Air Strainer, Exhaust Accessory, #LO76;  stop & taillomp ea. 10, flasher an 15, Merter Cyclinder 367641  Rack, including Single Stat ca. 80, Headlamps ea.  Seats, Truck  Miscel Lot including tailpipes, used tires, used parts  Cabinet, Red Metal  Light bulbs, 750 Watt  Lot includes Power Beam ea. 4; All purpose Clamp ea. 6;  Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper,  ea. 15; Oil Seals 2 boxes; Enging Starting Fluid 1 case;  Headlamps ea. 5  Tan Metal Tables  Chairs  Floursecent Table lamp  Smith Corona Typewriter #PC5120014-15			Seatbelts Fuelpumps 8. V Belts
Rack, Miscel parts; Valves, Seals Rack, Miscel parts; Valves, Seals Rack, including Misc Lamps, Valves Truckparts Rack, including Paine, Headlight Aimer Cyclinder Oxygen Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillamp ea. 10, flasher & 15, Me ther Cyclinder 367641 Rack, including Single Scat ca. 80, Headlamps ea. Rack, including tailpipes, used tires, used parts Rack, including tailpipes, used tires, used parts Cabinet, Red Metal Light bulbs, 750 Watt Lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Starting Fluid 1 case; Headlamps ea. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5120014-15	18	ea. 1	Rack, including contents, Warr Alays Con trucks
Rack, finscel parts; Valves, Seals Rack, including Miss Lamps, Valves Truckparts Rack, including Paint, Headlight Aimer Cyclinder Oxygen Rack, with oil filter and of items Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillamp ea. 10, flasher & 15, Merter Cyclinder 367641 Rack, including Single Seat ca. 80, Headlamps ea. Seats, Truck Miscel. Lot including tailpipes, used tires, used parts Cabinet, Red Metal Light bulbs, 750 Watt Lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 1h, 50GRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Starting Fluid 1 case; Headlamps ea. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5120014-15			Air Filters Miscel Filters Oil Tilt
Rack, including Misc. Lamps, Valves Truckparts Rack, including Paint, Headlight Aimer Cyclinder Oxygen Rack, with oil filter and of items Rack, including Air Strainer, Exhaust Accessory, #4076; stop & taillamp ea. 10, flasher & 15, Mester Cyclinder 367641 Rack, including Single Stat ca. 80, Headlamps ea. Rack, including Air Strainer, Exhaust Accessory, #4076; stop & taillamp ea. 10, flasher & 15, Mester Cyclinder 367641 Rack, including Single Stat ca. 80, Headlamps ea. Rack, including Misc. Lamps Rack, including Misc. Lamps Rack, including Paint, Headlight Aimer Rack, with oil filter and of items Rack, including Misc. Lamps Rack, including Paint, Headlight Aimer Rack, including Nisc Items Rack, including Nisc Items Rack, including Nisc Items Rack, including Air Strainer, Exhaust Accessory, #4.076; stop & taillamp ea. 10, flasher & 15, Mester Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #4.076; stop & taillamp ea. 10, flasher & 15, Mester Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #4.076; stop & taillamp ea. 10, flasher & 15, Mester Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #4.076; stop & taillamp ea. 10, flasher & 15, Mester Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #4.076; stop & taillamp ea. 10, flasher & 15, Mester Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #4.076; stop & taillamp ea. 10, flasher & 15, Mester Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #4.076; stop & taillamp ea. 10, flasher & 15, Mester Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #4.076; stop & taillamp ea. 10, flash	19	ea. 1	Rack Miscol parts Volume College
21 ea. 1 22 ea. 1 23 ea. 1 24 ea. 1 25 ea. 1 26 ea. 7 27 ea. 1 28 ea. 1 29 box 1 30 ea. 1 11 29 box 1 30 ea. 1 20 Ea. 1 21 Ea. 1 22 Ea. 1 23 Ea. 1 24 Ea. 1 25 Ea. 1 26 Ea. 7 27 Ea. 1 28 Ea. 1 29 Ea. 1 29 Ea. 1 20 Ea. 1 21 Ea. 1 22 Ea. 1 23 Ea. 1 24 Ea. 1 25 Ea. 1 26 Ea. 7 27 Ea. 1 28 Ea. 1 29 Ea. 1 29 Ea. 1 20 Ea. 1 21 Ea. 1 22 Ea. 1 23 Ea. 1 24 Ea. 1 25 Ea. 1 26 Ea. 1 27 Ea. 1 28 Ea. 1 29 Ea. 1 29 Ea. 1 20 Ea. 1 21 Ea. 1 22 Ea. 1 23 Ea. 1 24 Ea. 1 25 Ea. 1 26 Ea. 1 27 Ea. 1 28 Ea. 1 29 Ea. 1 29 Ea. 1 20 Ea. 1 20 Ea. 1 21 Ea. 1 22 Ea. 1 23 Ea. 1 24 Ea. 1 25 Ea. 1 26 Ea. 1 27 Ea. 1 28 Ea. 1 29 Ea. 1 20 Ea. 1 20 Ea. 1 21 Ea. 1 22 Ea. 1 23 Ea. 1 24 Ea. 1 25 Ea. 1 26 Ea. 1 27 Ea. 1 28 Ea. 1 29 Ea. 1 20 Ea. 1 20 Ea. 1 21 Ea. 1 22 Ea. 1 23 Ea. 1 24 Ea. 1 25 Ea. 1 26 Ea. 1 27 Ea. 1 28 Ea. 1 29 Ea. 1 20 Ea. 1 20 Ea. 1 21 Ea. 1 22 Ea. 1 23 Ea. 1 24 Ea. 1 25 Ea. 1 26 Ea. 1 27 Ea. 1 28 Ea. 1 29 Ea. 1 20 Ea. 1 21 Ea. 1 22 Ea. 1 23 Ea. 1 24 Ea. 1 25 Ea. 1 26 Ea. 1 27 Ea. 1 28 Ea. 1 28 Ea. 1 29 Ea. 1 20 Ea. 1	20	ea. 1	Pools install parts; valves, Seals
22 ea. 1 23 ea. 1 24 ea. 1 25 ea. 1 26 ea. 7 27 ea. 1 28 ea. 1 29 box 1 30 ea. 1 31 2 32 Ea. 1 33 1 34 1 34 Ea. 1 35 Ea. 1 36 Ea. 1 37 Each, with oil filter and of items Rack, including Air Strainer, Exhaust Accessory, #4076; stop & taillomp ea. 10, flasher &a 15, Menter Cyclinder 367641 Rack, including Single Stat ea. 80, Headlamps ea. Seats, Truck Miscel. Lot including tailpipes, used tires, used parts Cabinet, Red Metal Light bulbs, 750 Watt Lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 14, 50CRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Starting Fluid 1 case; Headlamps ea. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5120014-15			Rack, including Miss Lamps, Valves Truckparts
Rack, with oil filter and of items Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher An 15, Marter Cyclinder 367641 Rack, including Single Stat ea. 80, Headlamps ea. Rack, with oil filter and of items Rack, including Air Strainer, Exhaust Accessory, #LO76; stop All 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop All 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop All 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop All 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop All 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop All 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop All 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop All 15, Marter Cyclinder 367641 Rack, including Air State A. 15, Marter Cyclinder 367641 Rack, including Air State A. 15, Marter Cyclinder 367641 Rack, including Air State A. 15, Marter Cyclinder 367641 Rack, including Single State a. 16, Norder State A. 16, Norder State A. 16, Norder State A. 16, Norder State A.	22		Mack, including Paint, Headlight Aimer
Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher & 15, Marter Cyclinder 367641 Rack, including Single Stat en. 80, Headlamps ea. Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher & 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher & 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher & 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher & 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher & 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher & 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher & 15, Marter Cyclinder 367641 Rack, including Air Strainer, Exhaust Accessory, #LO76; stop & taillomp ea. 10, flasher & 15, Marter Cyclinder 367641 Rack, including Single Stat en. 80, Headlamps ea.  Seats Truck Miscel. Lot including tailpipes, used tir. \$0, Keadlamps ea.  Seats Truck Miscel. Lot including tailpipes, used tir. \$0, Keadlamps ea.  Seats Truck Miscel. Lot including tailpipes, used tir. \$0, Keadlamps ea.  Seats Truck Miscel. Lot including tailpipes, used tir. \$0, Keadlamps ea.  Seats Truck Miscel. Lot including tailpipes, used tir. \$0, Keadlamps ea.  Seats Truck Miscel. Lot including tailpipes, used tir. \$0, Keadlamps ea.  Seats Truck Miscel. Lot including tailpipes, used tir. \$0, Keadlamps ea.  Seats Truck Miscel. Lot including tailpipes, used tir. \$0, Keadlamps ea.  Seats Truck Miscel. Lot includes Power Be			
Rack, including Air Strainer, Exhaust Accessory, #L076; stop & taillomp ea. 10, flasher & 15, Marter Cyclinder 367641 Rack, including Single Stat en. 80, Headlamps en. Seats, Truck Aiscel. Lot including tailpipes, used tires, used parts Cabinet, Red Metal Light bulbs, 750 Watt Lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Starting Fluid 1 case; Headlamps en. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5120014-15			Rack, with oil filter and of items
ea. 1 26 ea. 7 27 ea. 1 28 ea. 1 29 box 1 30 ea. 1 10 flasher & 15, Menter Cyclinder 367641 29 box 1 30 ea. 1 20 Early Search Se	24	ea. 1	Rack, including Air Strainer, Fyraust Accourage, 40076-
26 ea. 7 27 ea. 1 28 ea. 1 29 box 1 30 ea. 1  Light bulbs, 750 Watt Lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Starting Fluid 1 case; Headlamps ea. 5  Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5120014-15			stop & taillomp ea. 10 flashow on 15 Means of 15 Means of 15
ea. 1  28 ea. 1  29 box 1  30 ea. 1  Light bulbs, 750 Watt  Lot includes Power Beam ea. 4; All purpose Clamp ea. 6;  Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper,  ea. 15; Oil Seals 2 boxes; Enging Sterting Fluid 1 case;  Headlamps ea. 5  Tan Metal Tables  Chairs  Floursecent Table lamp  Smith Corona Typewriter #PC5120014-15	25	ea. 1	Back, including Single Section 22 17, He ter Cyclinder 367641
27 ea. 1 28 ea. 1 29 box 1 30 ea. 1  Light bulbs, 750 Watt  Lot includes Power Beam ea. 4; All purpose Clamp ea. 6;  Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper,  ea. 15; Oil Seals 2 boxes; Enging Sterting Fluid 1 case;  Headlamps ea. 5  Tan Metal Tables  Chairs  Floursecent Table lamp  Smith Corona Typewriter #PC5120014-15	26	ea. 7	Sorte Theat.
28 ea. 1 29 box 1 30 ea. 1 Light bulbs, 750 Watt Lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Starting Fluid 1 case; Headlamps ea. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5120014-15			
box 1  Light bulbs, 750 Watt  Lot includes Power Beam ea. 4; All purpose Clamp ea. 6;  Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper,  ea. 15; Oil Seals 2 boxes; Enging Starting Fluid 1 case;  Headlamps ea. 5  Tan Metal Tables  Chairs  Floursecent Table lamp  Smith Corona Typewriter #PC5120014-15			miscel. Lot including tailpipes, used tires, used parts
lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Starting Fluid 1 case; Headlamps ea. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5120014-15			Cabinet, Red Metal
Lot includes Power Beam ea. 4; All purpose Clamp ea. 6; Bower Bearing ea. 1; Single Stat ea. 14, 50GRIT Sandpaper, ea. 15; Oil Seals 2 boxes; Enging Starting Fluid 1 case; Headlamps ea. 5 Tan Metal Tables Chairs Floursecent Table lamp Smith Corona Typewriter #PC5120014-15			Light bulbs, 750 Watt
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Smith Corona Typewriter #PC5120014-15			rioursecent Table lamp
Brown File			. Smith Corona Typewriter #PC5120014-15
	35	Τ .	Brown File

A Manual Comments of Andrews

# WM B DUFFY CARTING CO. INC.

[Page 2]

ITEM NUMBER		DESCRIPTION
36 37 38 39 40 41 42 43 44 45 46 47	1 1 2 1 1 2 3 1 1 1 1 1	Brown Formica Top Table Victor adding machine #3210987654321 Frieden adding machine Grey Metal File Cabinets Underwood Typewriter Coat Rack Tan Metal 4 drawer office desks 5 drawer metal file cabinets Green metal locker 3 section metal shelving unit Brown Wooden Table Blue Vinyl Loveseat Miscellaneous lot of office supplies including 1 waste
	ea. 1	basket and 1 bulletin bosnie  T-63 Freuhauf Flatt d Trailer - 1. Lic. #-15: 10:09083
48	ea. 1	13. 111 railmobile raile (901d & mars)
50	ea. 1	Part Trailmobile Trailer (Gold & White)N.Y. Lic. # E.LAye Insp.
51	ea. 1	T-38. 971 Froutian: Tr ler 1. 1. 13. #55.21. # TM 193406
52	ea. 1	
53	ea. l	- i Chaigh Van Trailer 1-00 Hele Inc.
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56	ea. 1	T-61 1953 Freuhauf Towbed Trailer M.Y. Lic. #1-1/800 #FW87151
57	ea. 1	2.5 10/1 White Co. Inc. 11/2 #63 28
58	ea. 1	15 CMC 4000 Frack 11.11 Inc. #3041490
59	ea. 1	71 White Co. Inc. Hack #11 oct

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55 ea. 1 56 ea. 1 57 ea. 1 58 ea. 1 59 ea. 1	Freuhauf Flatbed Trailer N.Y. Lic. #3-59834 1953 Freuhauf Towbed Trailer N.Y. Lic. #B-46800 #FW87151 1941 White Co. Inc. Truck Lic. N.Y. 7525HD #241040 CMC 4000 Truck N.Y. Lic. #6841GR White Co. Inc. Truck #71

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

### Notice Of

# PUBLIC AUCTION SALE

Under authority contained in section \$331 of the Internal Revenue Code, the property nescribed below has been seized for nonpayment of delinquent internal revenue taxes due from Wm B D.::; Carting Co. Inc., 342 Whitney St., Rochester, New York

The property wall be sold at public anction is accordance with the provisions of section 6305 of the Internal Revenue Code, and pertinent regulations.

DATE OF SALE AND 15

19 75

TIME OF SALE 9:30

1.11.12

PLACE OF SALE

342 Whitney St., Rochester, New York

DESCRIPTION OF PROPERTY

The property will be offered for the separate item numbers.

PROPERTY MAY BE INSPECTED AT: 342 Whitney St. and the lot on the corner of Brayer and Child St. (Off Lyell Ave) on Monday, 5/12/75 between 1:00 P.M. and 4:00 P.M. PAYMENT TERMS: Full payment required upon acceptance of highest hid. X. Deterred payment as follows: If total bid is more than \$200. submit 20% of bid or \$200. whichever is greater. Balance of bid to be paid within 2 hours after sale.

TYPE OF PAYMENT: All payments must be by eash certified beck, cashier's or treas are 's check or by a United States postal, bank, express or telegraph money order. Make the ks and notes orders payable to "Internal Revenue Service,"

TITLE OFFERED Only the right, title in and ie the property will be offere	d for sale serial to	Wm B Duffy 'art:	
propilite italian	J. en A. Vitalone		
ADDRESS FOR INFORMATION CONCERN 11 15			[mon (716)
Internal Revenue Service, 100	State St., Moonenter	, New York	263-11
			104M 2434 (REV 10-62)

DEPARTMENT OF THE TREASURY - INTERNAL PEVENUE SERVICE

# Notice Of

# PUBLIC AUGTION SALE

	Under authority contained in section 6331 of the Internal Revenue Co- described below has been seized for nonpayment of delinquent internal revenue	de, the property taxes due from
	Wm B Duffy Carting Co. Inc., 342 Whitney St., Rochester, New York	
	The property was be sold at public auction in accordance with the provisions of section Revenue Code, and pertinent regulations.	
	DATE OF SALE May 15 19 75 TIME OF SALE 9:30	A.MPXXX
	PLACE OF SALE 342 Whitney St., Rochester, New York	· · · · · · · · · · · · · · · · · · ·
	DESCRIPTION OF PROPERTY	
	SFE ATTACHED	
	SPE ATTACHED	
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	The property will be offered for sale as separate item numbers.	
	PROPERTY MAY BE INSPECTED AT: 342 Whitney St. and the lot on the cor	ner of Brayer
	and Child St. (Off Lyell Ave) on Monday, 5/12/75 between 1:00 P.M. and PAYMENT TERMS: Full payment required upon acceptance of highest bid	d 4:00 1 .m.
	follows: If total bid is more than \$200. submit 20% of bid or \$200. Whiche	ver is greater.
	Balance of bid to be paid within 2 hours after sale.  TYPL OF PAYMENT: All payments must be by cash, certified check, cashier's or tre-	
	a United States postal, bank, express or telegraph money order. Make cheeks and m	oney orders payable
	to "Internal Revenue Service."	
	TITLE OFFERED: Only the right, title, and interest of him B Duffy Cartin	
	in and to the property will be offered for sale. (See back of this form for redemption rig	DATE
	Joseph A. Vitalone, Revenue Officer	5/1/75
	ADDRESS FOR INFORMATION CONCERNING SALE	PHONE (716)
	Internal Revenue Service, 100 State St., Rochester, New York	263-3164
		FORM 2434, (REV. 10-69)
	I THE PARTY OF THE	**** ** ** * **** ****

#### REDEMPTION RIGHTS

The rights of redemption, as specified in section 6337 of the Internal Revenue Code, are quoted as follows:

#### "SEC. 6337. REDEMPTION OF PROPERTY

(a) Before Sale.—Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the Secretary or his delegate at any time prior to the sale thereof, and upon such payment the Secretary or his delegate shall restore such property to him, and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

#### (b) Redemption of Real Estate After Sale

- (1) Period.—The owners of any real property sold as provided ment on 6325, their hoirs execute or administrators, or any person having any interest therein, at the second or any person having any interest therein, at the second or any person having any interest the rein, at the second or any person having any interest the rein.
- (2) Price. –Such property or tract of property shall be permitted to be redeemed up in payment to the purchaser, or in case he cannot be found in the accounty in which the property to be redeemed it is structed, then to the Secretary or his delegate, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum."

#### EFFECT OF JUNIOR ENCUMBRANCES

Sec. 6339(c). Effect of Junior Encumbrances.—A certificate of sale of personal projects given or a deed to real property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority.

FORM 668-A

DEPARTMENT OF THE TREASURY -INTERNAL REVENUE SERVICE

DATE

(REV. DEC. 1973)

05-05-75

## NOTICE OF LEVY

Kerox Corp Karak Square Rochester, N.Y.



STRICT Buffills, .... York

You are hereby notified that there is now due, owing, and unpaid to the United States of America, trying tappayer

KIND OF TAX	TAK PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING NO.	UNPAID BALANCE OF ASSESSMENT	STATUTOR: ADDITIONS	OTAL
941 941 941	03-31-74 06-30-74 09-30-74 12-31074	08-15-74 03-15-74 12-23-74 05-19-75	15-0795879	32,886.12 33,248.55 636.20 20,6h1.74		37,372.67 36,477.70 695.33 20,833.59
	<u>                                     </u>			TOTAL AMOI	UNT DUE	95,333.81,

You are further notified that demand has been made for the are sent to the herein upon the taxonya neglected or refused to pay, and that such amount is still due, on the driving and bank due, or and bank due 1. i. ef

tions provided by law, and demand is hereby made up a you for the amount necessary to made the forth here n, or car such lasser sum as you may be indeed to him, to be applied as a payment of the Checks or come y orders should be made particle to that all Revenue Services. A. OK. SE CIT W. JAN . / Co. THEE.

Revenue Officer

indicator, ......

(Name and Address of Taxpoyer)

Ma B Duffy Carting Co. Inc 34? Unitney St. Rechaster, N.Y. 11,606

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-				-		 

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PART 3 - TO BE FURNISHED TO LAXPAYER

FORM 668-A

DEPARTMENT OF THE TREASURY -INTERNAL REVENUE SERVICE

DATE

05-05-75

### NOTICE OF LEVY

TO S Fidelity & Conventy 10 S Winton Rd. Rochester, H.Y. 12818



ORIGINATING DISTRICT

PoffaLo, M.Y.

You are hereby notified that there is now due, owing, and unpaid to the United States of America, from the taxpayer whose name appears below the sum of

KIND OF TAX	PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING NO.	P. OF ASS NT	STATUTORY ADDITIONS	TOTAL
941 941 2290 2290	05 30-74 03-31-74 05-30-74 06-30-75	08-15-74 03-15-74 11-11-74 11-11-74	16-0795879 16-0795879	\$ 33,248.55 42,501.25 1,311.49 1,474.18	\$ 3302.51 3603.27 61.68 69.62	\$ 36,551.06 46,189.62 1,373.17 1,543.80

You are further notified that demand has been made for the amount set forth I erein upon the tappage who has neglected or refused to pay, and that such amount is still due, owing, and import from the exprage. Accordingly, you are further notified that all preparty, rights to preparty, moneys, stedits, and here is assist now in your passession and belonging to this tappager (or with respect to which you are obligated) and our import of money or other obligations owing from you to this tappager, or on which there is a lien provided under anapter 64, Internal Revenue Code of 1954, are hereby levied upon and soized for satisfaction of the aforesaid tox, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payment on his tax liability. Checks or money orders should be made payable to "Internal Revenue Service".

Deph Histoline	taline Rovenno Officer		ADDRESS (CITY AND STATE)		
	d Address of Taxpayer)  ting Co., I <sup>N</sup> c	-1	TITLE  DATE AND TIME  SIGNATURE OF REVENUE OFFICER OR SERVICE OF PRESENTATIVE		

FORM. 568-A

DEPARTMENT OF THE TREASURY -INTERNAL REVENUE SERVICE

DATE ...

January 21, 1975

# NOTICE OF LEVY

TO

Chase Maniattan Bank Franklin St. Rochester, NY 1h604 Attn: Customer Service (garnishment dept)



ON JUNATING DISTRICT

You are hereby notified that there is now due, owing, and unpaid to the United States of America, from the taxpayer whose name appears below, the sum of

KIND OF TAX	TAN PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING NO.	UNPAID EARANCE OF ASSESSMENT	STATUTORY ADDITIONS	TOTAL
94 <u>1</u> 94 <u>1</u> 2290 2290	71,03 71,06 71,65 7505	03-15-74, 08-15-74 11-11-74 11-11-74	16-0995579	\$1,2,409.35 33,71,8.55 1,1,59.71 1,471,13	\$ 0,000.11 \$ 1,000.93 35.14 40.33	1, 503,15 35,215,17 2,105,75 1,516,41

#### TOTAL AMOUNT DUE

You are further notified that demand has been made for the amount set forth herein upon the taxpayer neglected or refused to pay, and that such amount is still due, one of the form this temporary right to property, the expect of J bank decoding to this temporary for with respect to which you are a stad and all so. It is essentially to be a few obligations of the ground to the storager for with respect to which you are a stad and all so. It is ensured that the control of the property is a state of the property of the entire obligations of the property of the state of the property of the entire obligations of the property of the state of the property of the entire obligations of the property of the entire of the property of the entire of the property of the entire of the entire of the entire of the property of the entire of the enti

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1= X-1-	MULT Company Officer	CERTIFICATE OF SERVICE
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CSASE	(Name and Address of Taxpayer)	NAME
<del>`</del> =\	Un B Duffy Cording Co. Inc. 342 Unitney St.	DATE AND FOR
	Pochester, New York 11,505	SIGNATURE FAIR CONTROL OF SELECTION OF THE SELECTION OF T
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PART 3 -- TO BE FURNISHED TO TAKE AYER

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DEPARTMENT OF THE TREASURY -INTERNAL REVENUE SERVICE

Jan 24, 1975

# MOLLE OF LEVY

Lincoln 1st Rank of Acchester

1 Fincoln 1sc Square

Restautor, Jan York 1h604

Atth: Carol Vanderpool



ON SINATING PISTRICY

You are hereby notified that there is now due, owing, and unpaid to the United States of America, from the temptyer whose name appears below, the sum of

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KIND OF	TAX. PERIOD ENDED	© DATE OF ASSESSMENT	IDENTIFYING NO.	BALANCE OF ASSESSMENT	STATUTOR- ADDITIONS	. TOTAL
941 941 2290 2290	71,53 71,55 71,55 71,55 75,55	02-15-74 03-15-74 11-11-74 11-11-74	16-019-019	\$1.2,4,37.35 13,249.55 1,469.21 1,474.18	1,8,7,00 1,8,7,00 30.11 1/0.10	1,504.75 1,504.75

#### TOTAL AMOUNT DUE

63,771.09

You are further notified that demand has been made for the amount set of the herein upon the "pay" what neglected or refused to pay, and that such amount it still due oving a "to, of from this tax over a great you are further notified that all property, rights to property, moneys, or and bank digress now we session and belonging to this taxpayer for with respect to which you are or golded and all sum. I have a the obligations owing from you to this taxpayer, or on which there is a lian provided under Ching od, now I have enue Code of 1954, are hereby tried upon and toked for a disfaction of it a disregard large, with a additions provided by law, and demand is hereby made upon you for the amount necessary to set it will be forth here in, or for such lesser sum as you may be addited to him, to be applied as a payme was set as ability. Checks or morely orders should be made payable to "Internal Revenue Envice".

(Name and Address of Taxpayar)

the B haffy Conting Co. Lec. 3' A Whitney St. Bochester, New York 14636

Acot 026-613-7 LY

CENTILICATE OF SERVICE

I hereby districted this naive of levy was sorted to district a copy of it is the nerson a collicity.

BATE SE PAR

SILVANDO A STANDAR OF SELECTION

PART 3 - TO BE FURNISHED TO TAXIFACER

FORM 668 - AIMIV 12 - 791

FORM . 668-A

DEPARTMENT OF THE TREASURY -INTERNAL REVENUE SERVICE

NOTICE OF LEVY

January 24, 1975

10

Contral Trust Co.
Lh Exchange St.
Lectestor, New York
Attn: John St.

1/27/15 = 82 AID



ON CHATING DISTRICT

You are hereby notified that there is now due, owing, and unpaid to the United States of Assertics, from the taxpayer whose name appears below, the sum of

KIND OF TAX	TAX PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING NO.	UNPAID BALANCE OF ASSESSMENT	STATUTOR	TOTAL
9/1 9/1 2000 2200	7405 7405 7505	0:-15-7/4 0:-15-7/4 11-81-7/4 11-11-7/4	15-079-079	\$ 12,40,35 03,288.55 1,469.21 1,474.10	\$ 5,0,4,117 1,0,0,0,0	5 765, 33.76 33,134.77 1,636,75 1,636.61

## TOTAL AMOUNT DUE

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You are further notified that demand has been made for the amount set first begain upon the	1	
neglected or refused to pay, and that such amount is still dee, owl	igni gast .	ie:
you are further notified that all property, right to perty, more, thank dec		
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tions provided by two and domar its hereby made open you for the amount necessary to so forth herein, or for such lesser sum as you may be to lebte! to him, to be applied as a payment the controller and	i, the	1, -01
Charles or a service of the service	,	
Checks or money a dera should be made physical to harnel Revenue Social	• • •	ilmity.

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aucht His	111	7	ADDREST HITT	1181	
- in the		corcino (	Aber Decimber,	. A. M. Yould	

(Name and Address of Taxpayer)

Ma 1. Puffy Gereing Co. Inc. 3/2 Unitary 15. Rechestur, New York 14,505

1	 	4	
4 1	•		

CLAPPICATE OF SERVICE

I hereby to the at this natice of lavy was served by telling a copy of it to the person named hereby.

NAME

DATE AN: 11

STATUTE OF STATE

PART 3 - TO BE FURNISHED TO TA GAYER

For 668 - A.m. 2 -731

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

ROBERT J. MYKINS,

Plaintiff

v.

CIVIL ACTION NO. 75-224

UNITED STATES TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE,

Defendant

UNITED STATES OF AMERICA'S MOTION TO DISMISS

Comes now the defendant in the above-styled cause, United States Treasury Department, Internal Revenue Service, by its attorney, Richard J. Arcara, United States Attorney for the Western District of New York, and moves this Court, pursuant to Rule 12(b), Federal Rules of Civil Procedure, to dismiss plaintiff's Complaint, on the grounds that:

- 1. The Complaint fails to state a cause of action upon which this Court may grant relief.
- 2. This Court lacks jurisdiction over the sovereign, United States of America, which has not consented to the relief requested by the plaintiff.
- 3. The Complaint seeks to enjoin the collection of taxes which is prohibited by Section 7421(a) of the Internal Revenue Code of 1954.

A Memorandum in Support of this Motion is attached hereto.

RICHARD J. ARCARA United States Attorney

By:

Of Counsel:

DAVID G. LARIMER
Assistant U. S. Attorney

GERALD C. MILLER
Trial Attorney, Tax Division
U.S. Department of Justice
Washington, D. C. 20530

MIN 1 7 1975 INTERNAL REVEAUE GERVICE BUFFALD CISTRICT

At a liquion Term of the U.S. District Court, Western District of New York at the-Federal Building, City of Rochester, New York on the

PRISENT: HOW. MAROLD P. BURKE U.S. District Gourt Judge

UNITED STATES OF AMERICA WESTERN DISTRICT OF NEW YORK U.S. DISTRICT COURT CITY OF ROCHESTER, NEW YORK

ROBERT J. MYKINS 993 Stowell Drive Rechester, New York,

Plaintiff,

: ORDER TO SHOW : CAUSE ON MOTION : FOR FRELIMINARY

: INJUNCTION WITH : TEMPORARY RE-: STRAINING ORDER

U. S. TREASURY DEPARTMENT-INTERNAL REVENUE SERVICE Federal Building-100 State Street Rochester, New York,

Defendant. : Cuul 75-224

ON reading and filing the affidavit of Robert J. Mykins, sworn to the 12th day of June, 1975, the summons, verified complaint and undertaking herein,

LET the defendant show cause before this Court at a Motion Term to be held at the Federal Building, 100 State Street, Rochester, New York on the 23 day of July 1975 at 10:00 A.M. on that date or as soon thereafter as counsel can be heard why a" preliminary injunction should not be granted, enjoining the defendant, and pending a determination of this action for a permanent injunction, for damages against the defendant, on the ground that the plaintiff has demanded a permanent injunction and that said acts of the defendant, if committed, during pendency of this action would produce injury to the plaintiff, and

NITTLEMAN PIETROPACLI ATTORNEYS AT LAW SUITE 604 EXECUTIVE OFFICE BLDG. BOCHESTER. N. Y.

It appearing that a cause of action for a temporary restraining order exists and that enforcement of defendant's federal tax lien against Nm. E. Defry Carting Company, Inc. will cause immediate and irreparable damage, injury and loss to the plaintiff before notice can be served and a hearing had, and the plaintiff having submitted an undertaking, it is

ORDERED, that the plaintiff's undertaking be and the same is hereby fixed in the sum of seconditioned that the plaintiff, if it is finally determined that he is not entitled to a final restraining order will pay to the defendant all damages and costs which may be sustained by reason thereof, and it is further

ORDERED, that pending the hearing and determination of this motion, the defendant herein be and the same is hereby enjoined and restrained from enforcing afgebral tax lien against Wm. B. Duffy Carting Company, Inc., and it is further

Company, Inc., are enjoined from paying any monies to defendant pursuant to various notices of levy served upon said debtors by the defendant in furtherance of its federal tax lien, and it is further

MITTLEMAN
AND
PIETROPAOLI
ATTORNEYS AT LAW
SUITE 604
EXECUTIVE OFFICE BLDG.
ROCHESTER, N. Y.
14614

copies of papers and a certified copy of the order on the defendant persons of through its District Director in Rochester, New York or the decity District Director in Rochester, New York and said service shall be deemed sufficient.

Dated: Rochester, New York

12,1975.

HAROLD P. BURKE U.S. District Gourt Judge

MITTLEMAN
AND
PIETROPAGLI
ATTORNETS AT LAW
SUITE 604
EXECUTIVE OFFICS BLDG.
ROCHESTER. M. Y.
14614

UNITED STATES OF AMERICA WESTERN DISTRICT OF NEW YORK UNITED STATES DISTRICT COURT CITY OF ROCHESTER, NEW YORK

ROBERT J. MYKINS.

Plaintiff, :

-vs-

AFFIDAVIT

U. S. TREASURY DEPARTMENT-INTERNAL REVENUE SERVICE,

Defendant. :

STATE OF NEW YORK)
COUNTY OF MONROE ) SS.
CITY OF ROCHESTER)

ROBERT J. MYKIMS, being duly sworn, deposes and says:

- 1. That he resides at 993 Stowell Drive in the Town of Greece, County of Montoe and State of New York and that he is the Plaintiff in the above action.
- 2. That on or about the 16th day of July, 1974, you deponent, together with one, Robert H. Schmidhammer, entered into a management agreement with Wm. B. Duffy Carting Company, Inc. in which your deponent and the said Robert H. Schmidhammer, were to advance certain monies to Wm. B. Duffy Carting Company, Inc. and in which Wm. B. Duffy Carting Company, Inc. gave your deponent and the said Robert H. Schmidhammer the exclusive right to operate and manage said company for a period of three (3) years.
- 3. That in furtherance of said management agreement, your deponent herein advanced large sums of money to Wm. B. Duffy Carting Company, Inc., in order that said company could continue in business.

MITTLEMAN
AND
PIETROPAOLI
ATTORNEYS AT ARIF
SUITE 604
EXECUTIVE OFFICE BLDG.
ROCHESTER, N. Y.
14614

- 4. That on or about the 17th day of July, 1974 your deponent and Nm. B. Duffy Carting Company, Inc., entered into a security agreement in which your deponent obtained a security interest and all of Nm. B. Duffy Carting Company, Inc., personal property, debtors accounts, contract rights, chattel papers, accounts and contract rights now owned or hereinafter owned by William B. Duffy Carting Company, Inc., and all chattel papers now owned or hereinafter owned by Nm. B. Duffy Carting Company, Inc.
- 5. That pursuant to said security agreement your deponent caused to be filed a financing statement pursuant to Article 9 of the Uniform Commerical Code of the State of New York, said financing statement having been filed in the office of the Monroe County Clerk on July 17, 1974; and further pursuant to said security agreement, your deponent caused a financing statement to be filed in accordance with Article 9 of the Uniform Commerical Code of the State of New York with the office of the Secretary of State of the State of New York on September 26, 1974.
- 6. That on the 21st of January, 1975 the defendant filed a federal tax lien in the office of the Monroe County Clerk agains Wm. B. Duffy Carting Company, Inc., in the amount of \$75,681,29.
- 7. That pursuant to said federal tax lien, the defendant herein seized various items of personal property owned by Wm. 5. Duffy Carting Company, Inc.
- 8. That pursuant to said seizere, a public sale of said items was held at the office of Am. B. Duffy Carting Company, Inc., on May 15, 1975 at 9:30 A.M. Pursuant to said sale, defendant herein received \$11,892.00, which upon information and belief,

MITTLENAN
ARS
PIETROPAGLI
ATTORNETS AT LAW
SOF/E 604
EXECUTIVE OFFICE SLOG.
BOCKESTER, R. Y.
14514

defendant herein applied to the taxes due and owing to defendant by Wm. B. Duffy Carting Company, Inc.

- 9. Thatssaid seizure by defendant of the assets of Wm. E. Dutfy Carting Company, Inc., was in violation of your deponents security agreement; and further that the sale of said assets pursuant to said seizure was in violation of your deponents security interest and contrary to law.
- 10. That your deponent's security interest was perfected prior to the filing of defendant's federal tax lien and consequently, your deponent's interest in the assets of %m. B. Duffy Carting Company, Inc., have priority over defendant's federal tax lien.
- 11. That defendant wrongfully and contratory applied the proceeds of the sale of the assets of Nm. B. Duffy Carting Company, Inc., to reduce its federal tax lien.
- 12. The proceeds of said sale, referred to above, should have been paid over by the defendant and should have been applied as partial satisfaction of your deponent's security interest.
- 13. That pursuant to said federal tax lien filed by defendant against Vm. B. Duffy Carting Company, Inc., on January 21, 1975, defendant herein has issued several notices of levy to the debtors of Vm. B. Duffy Carting Company, Inc.
- 14. That the issuance of said notices of levy have impaired the security interest of your deponent herein.

MITTLEMAN
AND
PIETROPAGLI
ATTORNEYS AT LAW
SUITE 604
EXECUTIVE OFFICE BLDG.
ROCHESTER, N. Y.
14614

15. That your deponent has no adequate remedy at law relative to this cause of action.

Dated: Rochester, New York June 12, 1975 HOBER J. HYKINS

Sworn to before me this 12th day of June, 1975

PATRICK & PIETROPACIA NOVER PUBLIC

State of New York, Marche County My Commission Expires March 30, 13.74

MITTLEMAN
AND
PIETROPAGLI
AYTORNEYS AT LAW
SUITE 604
EXECUTIVE OFFICE BLDG.
PROCHESTER, N. Y.
14814

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

ROBERT J. MYKINS,

Plaintiff,

-VS-

CIVIL ACTION NO. 75-224

UNITED STATES TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE,

Defendant.

Transcript of proceedings had in the aboveentitled matter, before the Hon. Harold P. Burke, United States District Judge, in the United States District Court, Rochester, New York, on Monday, June 23, 1975.

#### APPEARANCES:

MESSRS. MITTLEMAN & PIETROPAOLI (By Patrick J. Pietropaoli, Esq.) 604 Executive Office Building Rochester, New York

Appearing on behalf of the Plaintiff

RICHARD J. ARCARA, ESQ.
United States Attorney
(By David G. Larimer, Esq.)
United States Courthouse
Rochester, New York

Appearing on behalf of the Defendant.

A. JAKE JACOBSON
OFFICIAL COURT REPORTER
254 U. S. COURTHOUSE
ROCHESTER, NEW YORK

Rochester, New York
Monday, June 23, 1975

MR. PIETROPAOLI: May it please the Court, I appear for the moving party, Robert J. Mykins and I will outline the facts of the case very briefly for the Court.

In July of 1974, more particularly July 16 of 1974, Robert Mykins, the plaintiff herein and another individual entered into a management contract to manage a facility in this town called the William B. Duffy Carting Company, Inc. That contract provided for Mykins and his partner to advance certain monies to keep William B. Duffy Carting Company, Inc. in existence and in furtherance of that contract, and more particularly on July 17, 1974, the Duffy Carting Company and Mykins and his partner executed a Security Agreement in which personal property of William B. Duffy Carting Company, Inc. and accounts receivable of William B. Duffy Carting Company, Inc. were pledged as security by that company for Mykins' advance of monies to the company.

In furtherance of the Security Agreement which was executed by the parties, a financing statement, pursuant to Article 9 of the Uniform Commercial Code of the State of New York was duly filed in the office of the Monroe County Clerk on July 17, 1974 and also a copy of that financing statement, Your Honor, was filed with the office of the Secretary of State of the State of New York on September 26, 1974.

In January of 1975 the Treasury Department Division of Internal Revenue filed a Federal tax lien for vayroll taxes due and owing by William B. Duffy Carting Company in the office of the Monroe County Slerk; the amount of that lien being \$78,671.29.

It is our position today, Your Honor,
that the Internal Revenue Service has violated
the rights of a secured party pursuant to the
Uniform Commercial Code, Article 9 of the
State of New York, Section 6323 of the Internal
Revenue Code outlines the law in this particular

area and the keynote case in this area is the case of Donald V. Madison Industries, Inc. from the Court of Appeals, Kansas, 1973.

. That case discussed the security interests and priorities relative to Federal tax liens and set up a four-point test to determine whether secured creditors under a State Law have priority over the Internal Revenue Service. The case briefly stated that a security interest would take priority over a filed tax lien if, number one, the security interest stemmed from a written agreement which we have in this case, which was entered into before the Federal tax lien was filed; (b) and it qualified as a commercial transaction under the State Law. The second test was that the loans were made pursuant to the written agreement not more than forty-five days after the tax lien was filed.

THE COURT: I will have to analyze that case. It is a waste of time to go through the steps and analysis.

MR. PIETROPAOLI: The citation of the

case if Your Honor pleases 183 Fed.2d.

THE COURT: It will be in your brief, won't it?

MR. PIETROPACLI: I don't have a brief here today, Your Honor.

THE COURT: Then I won't remember the case.

MR. PIETROPAOLI: Okay.

THE COURT: If you think that case is

very important it certainly should be before

me when I decide the case and I'm not going

to remember what you say here this morning.

MR. PIETROPAOLI: I will be more than happy to file a memorandum.

THE COURT: I don't care whether you are happy about it or not. I think you ought to file a brief.

MR. PIETROPAOLI: Fine, Your Honor.

Well, subsequent to the Internal Revenue

Service's filing of their tax lien, Your

Honor, they issued Notices of Levy pursuant

to that tax lien. They have sold certain

property belonging to William B. Duffy Carting

Company, items of personal property. They sold it on May 15, 1975. It is our contention that that violates our security interest.

Secondly, they have issued Notices of Levy to various debtors of William B. Duffy Carting Company, and monies have been paid by these debtors directly to the Internal Revenue

Service, in violation of our security interest. Consequently, Your Honor, we ask that a preliminary injunction be awarded by this Court in favor of the plaintiff against the defendant, until such time as the issues are decided in the main lawsuit. Thank you.

MR. LARIMER: Your Honor, I appear for the United States Treasury Department. Your Honor, we received last week from the Internal Revenue Service in Buffalo a copy of what is called an Order to Show Cause on Motion for Preliminary Injunction, with Temporary Restraining Order.

THE COURT: I didn't grant any Temporary
Restraining Order did I?

MR. PIETROPAOLI: No, Your Honor.

Restraining Order.

MR. LARIMER: Your Honor, I believe -THE COURT: Apparently my Order tranting
injunctions aren't very important. You don't
even know whether I granted a Temporary

MR. PIETROPAOLI: The Court denied my request for a Temporary Restraining Order.

THE COURT: I thought so and I said today for oral argument.

MR. LARIMER: This is a hearing.

THE COURT: This is a motion now for Preliminary Injunction.

MR. LARIMER: All right. The reason I had some difficulty, the motions which were submitted were crossed out apparently by Your Honor on the Temporary Restraining Order.

THE COURT: That means they are out when I cross them out.

MR. LARIMER: The original paragraph requested the hearing be held today for a permanent injunction.

THE COURT: No, for preliminary injunction.

I'm not holding a hearing this morning for

permanent injunction. That would be the trial.

MR. LARIMER: That is why I was somewhat confused, Your Honor. I assumed this was for preliminary injunction and I will address myself on that assumption.

My first point is that the United States
Attorney's office, nor the Department of
Justice was never served with that petition.
Counsel requested this morning that the
Government be enjoined, that the Court issue
a preliminary injunction, but counsel does
not state what we should be enjoined from
doing. In the first part of his argument
here today --

THE COURT: I would take it they mean to enforce the tax lien.

MR. LARIMER: Well, I'm not sure. In the first part of his argument today, counsel spent a great deal of time talking about what perhaps could be described as a wrongful conversion that the Government levied on some property and then sold it and he is claiming

in his claim this morning that that was done illegally and therefore he should presumably, get that money back. Of course it happened some time ago and any type of injunction would be fruitless at this point. If that is his primary concern today the motion should be denied. He has filed a lawsuit against the Government attempting to get that money back. He can pursue that. There is no need for any kind of injunction.

In addition on that point I would say whoever purchased the property of the taxpayer at the tax sale of coursedid so with the understanding that the property was purchased subject to any prior liens. That is a normal tax sale procedure so that counsel could proceed against whoever bought this property, could proceed in an attempt to recover the monies from the people who purchased that particular personal property of the Duffy Carting Company.

. But in any event if he is suing the Government for allegedly wrongfully converting

this property there is no need to enjoin the Government from doing what it has already done. I gather from his papers, and I'm referring specifically to the affidavit attached to the Order to Show Cause, the only paragraph that refers to anything else other than the fact that the Government allegedly wrongfully converted this property is at Paragraph 14 of that affidavit, wherein he states: "That the issuance of Notices of Levy have impaired the security interest of your deponent herein."

Nowhere in that affidavit, or today,
does he say how the Government by filing
levies on certain property has impaired the
security interest. The Government has not
yet made its final demand on those debtors
of the Duffy Carting Company for the money.
We have not requested them to pay over the
money to the Government. All we have done is
file levies in the Clerk's Office establishing
our priority. Now perhaps the most reasonable
approach would be that the Government will

agree that we will not make that final demand of payment on the levies at least for thirty days. We would request a hearing on the permanent injunction be held no sooner than thirty days.

THE COURT: That is a trial. They are suing for a permanent injunction. They are entitled to a trial.

MR. LARIMER: That is another problem.

To look at their complaint it is defective on its face. It alleges nowhere a basis that this Court has any type of jurisdiction so very shortly of course we will be moving to dismiss the complaint on that basis, that there is no allegation of any statutory right giving the plaintiff leave to sue in Federal Court. So of course at this point --

THE COURT: It seems to me if there are grounds for dismissal that ought to be the first motion to be considered in the case.

If this Court has any jurisdiction there isn't any purpose of my sitting here and listening to argument.

MR. LARIMER: As I say, we received these papers last Thursday and we will immediately do that. I expect we can have that done in thirty days.

THE COURT: July 14th, if you are going to move to dismiss it.

MR. LARIMER: Very well, Your Honor.

I will request an additional two weeks. I'm going to be out of town and if I'm not going to be handling it somebody from the Department would be handling it. There would be no problem but I would request that additional two weeks and the Government would agree that we will not request any of the debtors of this company to pay over that money.

MR. PIETROPAOLI: Your Honor, they already have --

THE COURT: Just a moment please. Wait until he gets through.

MR. LARIMER: Your Honor, we have filed our levies. I do not know for certain whether the Internal Revenue Service plans to file additional levies but they will not demand

payment at least until we have had a chance to air this motion to dismiss in thirty days.

MR. PIETROPACLI: If Your Honor please they have already demanded payment pursuant to some of those levies that were filed and the Xerox Corporation last Friday did pay over to the Internal Revenue Service \$8,000 of monies due and owing from it to Duffy Carting Company.

MR. LARIMER: That is news to me.

I was told this morning that nothing like
that had happened or would have happened.

THE COURT: Somebody has got their signals mixed --

MR. LARIMER: I can clarify it. The Government would oppose, other than what we have conceded to, we would oppose any motion enjoining the Government from filing levies.

THE COURT: I'm not going to grant any injunction here this morning. I'm going to put this down for July 14th and if you are going to move to dismiss I will hear that

motion at that time. It seems to me that is the important thing in the case, that if the Court hasn't any jurisdiction there isn't any purpose of sitting here and listening to motions.

MR. LARIMER: We are adjourned until the 14th for the Government's motion?

THE COURT: July 14th. Anything that you want to do, do it by July 14th.

MR. LARIMER: Other than what I conceded this morning there is no injunction against the Government.

THE COURT: There is no injunction.period, and I can't make that any plainer.

MR. LARIMER: Thank you.

MR. PIETROPAOLI: Do I understand that we have a stipulation from counsel that there will be no demand for payment?

THE COURT: Ask him about it. I haven't heard any stipulation.

Is that correct?

MR.LARIMER: Your Honor, I believe I stated that the Government would not make any

final demands for payment for two weeks until the motion to dismiss is resolved.

MR. PIETROPAOLI: Thank you.

# REPORTER'S CERTIFICATE

I, A. Jake Jacobson, Official Court Reporter for the United States District Court for the Western District of New York, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of an extract of proceedings had in the within-entitled numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me under my direction.

A. Jake Jacobson

Dated: August 5, 1975.

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

ROBERT J. MYKINS,

Plaintiff,

-VS-

APPEARANCES:

NO. 75-224

UNITED STATES TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE,

Defendant.

Transcript of proceedings had in the aboveentitled matter, before the Hon. Harold F. Burke, United States District Judge, in the United States District Court, Rochester, New York, on Monday, July 28, 1975.

MESSRS. MITTLEMAN & PIETROPAOLI (By Fatrick J. Fietropaoli, Esq.) 604 Executive Office Building Rochester, New York

Appearing on behalf of the Plaintiff

GERALD MILLER, ESQ.
Special Attorney
U. S. Department of Justice,
Tax Division
United States Courthouse
Rochester, New York

Appearing on behalf of the Defendant.

A. JAKE JACOBSON
OFFICIAL COURT REPORTER
254 U. S. COURTHOUSE
ROCHESTER, MEW YORK

Rochester, New York
Monday, July 28, 1975

THE CLERK: Robert J. Mykins versus
United States Treasury Department, Internal
Revenue Service; Order to Show Cause for
Preliminary Injunction. Motion by the
Government to dismiss.

MR. PIETROPAOLI: If it please the Court, I argued this motion with Mr. Larimer I believe on June 23rd of this year and I'm not going to argue it again before the Court.

THE COURT: What was the motion then?

MR. PIETROPAOLI: A motion for preliminary
injunction.

THE COURT: What kind of a case is it?

MR. PIETROPAOLI: It is a case against

the Internal Revenue Service based on a

Security Agreement which my client has filed

pursuant to Article 9 of the Uniform Commercial

Code of the State of New York.

. I have a memorandum summarizing my oral argument of the 23rd and a statement of

the law as I see it that applies to this case. Now the Clerk has also indicated that a motion to dismiss our action has been made by the Government. If the Court please, that motion was served upon my office by mail at about eleven o'clock Friday morning. I have not had an opportunity to research the law that is quoted in the memorandum that supports the motion. In addition to that the motion papers don't even have a return date on that and I would at this time object to that motion being considered today along with this motion.

MR. MILLER: My name is Gerald Miller.

I am from the Tax Division of the Department of Justice in Washington, D. C. We would ask that the Court consider the motion to dismiss filed by the United States as an opposition to plaintiff's motion for a preliminary injunction or a temporary restraining order and that insofar as the first cause of action of the complaint is concerned, if the Court so wishes that we not consider it as an opposition at this time it merely is a motion

to dismiss, perhaps to be decided at a later date. The second cause of action sets forth in the complaint requests injunctive relief against the levies which have not yet been made. In our memorandum we do cite a case decided by this Court in which Your Honor wrote us his final conclusion of law that the Court lacks jurisdiction under Section 426 --I would add that is of the Internal Revenue Code -- to enjoin a threatened levy. That is exactly the relief which has been requested here. The Supreme Court has several times, and three times within the last year reaffirmed the principal against granting injunctive relief against the Internal Revenue Service in the collection of taxes. And I think that the federal rules of Civil Procedure are liberal and broad enough so that our motion to dismiss could be considered as an opposition

THE CCURT: If I heard this motion in

June what is it doing on the calendar again?

MR. PIETROPAOLI: If it please the Court, the Government asked for an adjournment to

July 14th for the purposes of submitting an answering affidavit in a memorandum. They did not do that. They called my office about July 11th or July 12th and requested a further adjournment to today's date because one of the counsel was out of town. They filed a motion to dismiss and I didn't receive it until Friday morning, in the mail.

THE COURT: I suggest that the matter
be submitted for decision, including the
motion to dismiss. I will give you as long
as you want to answer it.

MR. PIETROPAOLI: I would request sometime around the middle of September in view of the fact that I am going to be away at least two weeks and possibly three weeks in the month of August.

THE COURT: All right, September 15th.

MR. MILLER: If I may, Your Honor, in

June, when this matter was first brought

before the Court, Mr. Larimer agreed on behalf

of the Government that the Internal Revenue

Service would not make any collection

matter is heard. It is now our position that this agreement ended as of today and the status quo will no longer be maintained if the Internal Revenue Service deems it necessary to make additional collections with respect to the taxpayer's taxes. I feel that I must so advise them.

THE COURT: You make a motion, not on notice, to dismiss here this morning. He is entitled time to answer that. Now in view of the fact that I am trying cases the balance of this week and we fold up here during August there is nothing I can do by September any way.

MR. MILLER: I understand that this is a complaint that has two causes of action. The first cause of action requests a money judgment against the Government for property which has been levied upon them and has been sold pursuant to that levy and the plaintiff seeks the proceeds of the sale. The motion to dismiss is addressed to that cause of

action as well as the request for injunctive relief. We do not ask the Court to decide the question of the money judgment at this time. However, the plaintiff has previously made a motion for temporary or preliminary injunctive relief. Our motion to dismiss can be viewed as an opposition to that motion.

THE COURT: Whatever motion it is I can't decide it today. I can't decide it the balance of this week because I'm ontrial. I am not here in August so I'm not ready to do anything until September.

MR. MILLER: I understand that.

THE COURT: September 15th.

MR. MILLER: I will continue to advise the Service, however, that it may now collect.

THE COURT: No. You may not advise it that it may now collect.

MR. MILLER: In that case I request the Court consider since this is basically the plaintiff's motion and he is the one who has sought the injunctive relief that the Court consider transferring this case to Buffalo.

THE COURT: No. I'm not going to transfer the case at all. I don't put my work over on the Buffalo Judges merely because I go on vacation. Ever since I have been on the bench we close up here in August.

MR. MILLER: I must advise the Court that the Government no longer considers that agreement to be in effect, to maintain status quo --

THE COURT: I will grant the stay until September 15th.

MR. PIETROPAOLI: Thank you, Your Honor.

MR. MILLER: Will the Court enter a written Order?

THE COURT: I will when it is presented.

I don't think any is necessary, but if you want one present one.

MR. PIETROPAOLI: If counsel would like a written Order I would be more than happy to prepare one for Your Honor's signature. I will have it this week, Your Honor.

MR. MILLER: Your Honor mentioned September 15th.

THE COURT: That isn't for a hearing.

That is to give an opportunity to file

whatever you want to file. That is not for a
hearing.

MR. MILLER: Thank you, Your Honor.

### REPORTER'S CERTIFICATE

I, A. Jake Jacobson, Official Court Reporter for the United States District Court for the Western District of New York, appointed pursuant to the provisions of Title 23, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of an extract of proceedings had in the within-entitled numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me under my direction.

A. Jake Jacobson

Dated: August 4, 1975.

# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

ROBERT J. MYKINS,

CIVIL ACTION NO. 75-224

Plaintiff

- VS -

ORDER GRANTING PRELIMINARY

INJUNCTION

UNITED STATES TREASURY
DEPARTMENT, INTERNAL REVENUE

SERVICE,

Defendant :

This matter having come before the Court on plaintiff's Complaint and Order to Show Cause, and the United States of America having filed a Motion to Dismiss plaintiff's Complaint, and counsel having appeared in response to said Order to Show Cause, this Court is of the opinion that plaintiff should have additional time to prepare a response to said motion, and

IT IS HEREBY ORDERED that plaintiff shall file his written response, if any, to the Motion to Dismiss on or before September 15, 1975; and

IT IS FURTHER ORDERED that the defendant United States
Treasury Department, Internal Revenue Service, is hereby enjoined
from seizing any assets of William B. Duffy Carting Company, Inc.
in which the plaintiff claims a security interest until such
time as this Court shall enter a further order herein.

ATTEST: A TRUE COPY.

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HAROLD P. BURKE U. S. District Judge

July 20, 1975.

HAROLD P. BURKE

United States District Judge

July 25 1975

UNITED STATES DISCRICT COURT WESTERN DISTRICT OF NEW YORK

ROBERT J. MYKINS,

Plaintiff

Defendant

CIVIL ACTION NO. 75-224

UNITED STATES TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE,

ORDER TO SHOW CAUSE

----- X

Internal Revenue Service, and the Motion of Richard J. Arcara, United

States Attorney for the Western District of New York, it is

ORDERED that Robert J. Mykins appear before the United States District Court for the Western District of New York in the courtroom at the United States Courthouse in Buffalo, New York, presided over by the undersigned on the Lt day of August, 1975, at 9'10 o'clock in the - 164 noon to show cause, if any he has, why he should not be compelled to post a bond, with surety, in the amount of \$125,000.00 for the purpose of securing the claims of the United States of America for the unpaid taxes of William B. Duffy Carting Co., Inc., or in the alternative, why, this Court should not vacate the Order Granting Preliminary Injunction entered herein on July 28, 1975. It is further

ORDERED that this Order together with the affidavit may be served upon the plaintiff, Robert J. Mykins, by delivery of copies to his counsel, Patrick J. Pietropaol; thereof to him personally. august mailing a dift

Dated at Buffalo, New York, this

UNITED STATES DISTRICT JUDGE

WHITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

ROBERT J. MYKING.

CIVIL ACTION NO. 75-224

Plaintiff

- vs -

UNITED STATES TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE,

AFFIDAVIT

Defendant

JOSEPH A. VITALONE, being duly sworn, deposes and says:

- 1. That he is a duly commissioned Revenue Officer of the Internal Revenue Service with a post of duty in Ecchester, New York.
- 2. That in his capacity as a Revenue Officer he has been assigned to determine and to collect the Federal tax liabilities of William B. Duffy Carting Co., Inc.
- 3. That in furtherance of the collection of the aforesaid liabilities a Notice of Federal Tax Lien was filed with the Monroe County Clerk, Rochester, New York. Notices of Federal Tax Liens have also been filed with the Secretary of State at Albany, New York on January 22, May 20 and June 5, 1975.
- 4. In a further attempt to collect the liabilities, the Internal Revenue Service has seized the operating rights of the taxpayer, William B. Duffy Carting Co., Inc., as evidenced by New York State Department of Transportation Certificate of Public Convenience and Necessity Number 3270 and Interstate Commerce Commission Certificate of Public Convenience and

information and belief and notwithstanding the setzure of the above-described operating rights, the tampaver, Milliam 3. Suffy Carting 30., Inc., has continued to operate and has earned accounts receivable in which the United States of America has a first lien by virtue of the several fillings of Motices of Federal Tax Lien set forth in paragraph 3, above, but which are being collected by the plaintiff, Pober J.

Tykins, or by others acting on his behalf in derogation of said tax lien.

5. That the taxpayer, Milliam B. Duffy Carting Co., Inc., remains indebted to the United States for unpaid federal taxes in an amount of not less than 095,000.00.

Further your affiant saith not except that this affidavit is given in support of a motion for an Order to Show Cause.

JOSEPH A. VITALONE
Revenue Officer
Collection Division
Internal Ecvenue Service
100 State Street
Rochester, New York
Telephone: (716) 263-3154

Sworn to and subscribed before me, a Notary Public of the State of New York on the \_\_\_\_\_\_ day of August, 1975.

S/ Dail Larine\_
Notary Public

My commission expires:

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MEW YORK 2 3 ROBERT J. MYKINS, Plaintiff, 5 CIVIL ACTION -vs-75-224 6 UNITED STATES TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE, 7 Defendant. 8 9 Proceedings in the above entitled action held before 10 the HON. JOHN T. ELFVIN, United States District Judge, 1 11 and for the Western District of New York, at Buffelo, Nep 12 York, on Wednesday, August 6, 1975. 13 14 15 MESSRS. MITTLEMAN & PIETROPACLI, by 16 APPEARANCES: PATRICK J. PIETROPACLI, ESQ., Appearing on behalf of the Plaintiff. 17 RICHARD J. ARCARA, ESQ., 18 United States Attorney, by ROGER P. WILLIAMS, ESQ., 19 Assistant United States Attorney, and GERALD MILLER, ESQ., 20 United States Department of Justice, Appearing on behalf of the Defendant. 21 2.3 23

II. T. NOEL

\* \* \* \* \*

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1	THE COURT:	All right. The case of Robert J.
		Mykins against the United States Treasury
3		Department, Internal Revenue Service,
4		Civil 75-224. Who is here?
5	MR MILLER:	Good morning, your Honor. My name
6		is Gerald Miller from the Tax Division
7		of the Department of Justice in Washington.
8	THE COURT:	All right.
9	MR. PIETROPAOLI	: . If the Court please, my name is
10		Patrick J. Pietropaoli. I am a member
11		of the firm of Mittleman & Pietropaoli.
12		I represent Robert J. Mykins.
13	THE COURT:	All right, Mr. Miller.
14	MR. MILLER:	May it please the Court, this morning
15		we are here pursuant to your Honor's order
16		granted this past Friday, directing the
17		plaintiff to show cause why
18	THE COURT:	You are really here on your motion,
19		which is in the form of an order to show
20		cause. It is your motion.
21	MR. MILLER:	That is correct. As the Court is
22		aware, there has been an injunction entered
23	·	into this matter against the United States.
24		I think to make this clear, and I think
25		counsel would point this out anyway, in

order to, have a record upon which to proceed, I am not the one who drafted the injunction, and since it is against the United States, I do not feel we should be bound by its terms, as to any inherent defects contained within it when it comes time to argue.

In any event, we have presented to the Court an affidavit of Mr. Vitalone, the revenue officer, setting forth the fact that we believe that the plaintiff is collecting accounts receivable of the taxpayer which are being currently earned. These are accounts receivable in which the plaintiff could in no way have a security interest, since they arise more than forty-five days after the filing of the federal tax lien and therefore not protected under the provisions protecting secured parties in the Internal Revenue Code. That would be Section 6323(c). To that extent, it seems that the injunctive relief previously granted by the Court may be causing irreparable harm to the Government, rather than preventing? the

H. T. NOEL
OFFICIAL REPORTER, U.S. DISTRICT COURT

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plaintiff from suffering irreparable
harm. In order to alleviate that possibility, we have requested that either a bond
be posted or that the order granting the
injunction be vacated or modified to some
extent as to protect adequately the
interests of both parties.

THE COURT:

9"

All right.

MR. MILLER:

Well, I don't know whether or not the Court would like to hear an attack upon the injunction?

.

Well, what concerns me primarily, as I indicated to Mr. Vitalone, and also Mr. Williams, who was here in your place and who, of course, had no direct participation in what went on in Rochester, what primarily concerns me is how you would expect me to step into something where it isn't really this court that did some thing, it was Judge Burke, presiding in Rochester, who heard this case and granted the injunction. Now, what is there that it can come before me?

THE COURT:

MR. MILLER:

Your Honor, at this time I would like to state for the record that we did go

H. T. NOEL
OFFICIAL REPORTER, U.S. DISTRICT COURT

back to Judge Burke, and I presume -- I 2 was not the one who was there -- Hr. 3 Larimer in Rochester went to see him --When was this? THE COURT: 5 This was on Thursday. MR. MILLER: THE COURT: This you do not know of your own knowledge? . . MR. MILLER: No. 9. You have no affidavit to that effect? THE COURT: 10 No, I do not. We did attempt to ge! MR. MILLER: 11 a hearing on the question of the posting 12 of a bond, and we were told that the 13 Court would not be in session in Rochestay 14 after Thursday, July 31st, and that we 15 could not be heard at that time, and I 16 think that because of the actions that the 17 plaintiff is continuing to take, the United 18 States tax lien is being seriously jeopard-19 ized here. 20 The Court does have -- I believe the 21 Court has a copy of the transcripts of. 22 both the June 23rd hearing and the heari 23 of July 28th, and there just is no basis

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set forth either in the transcripts of

the heavings or in the order granting th

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injunction itself for the granting of an injunction. No finding made of any sort of equitable jurisdiction whatever.

I would submit to the Court that it doesn't exist.

THE COURT:

I have read the transcripts, of course, and you were not present at the June 23rd argument or hearing in front of Judge Burke. That was handled by Mr. Larimer. At that time Mr. Larimer indicated that the government felt that there was not jurisdiction in the federal court to give to the taxpayer here, the plaintiff, the relief he was seeking, and Mr. Larimer indicated that he was going to make a motion to dismiss. Judge Burke quite plainly indicated that this was a matter of primary concern, that this was the first base to be touched, if there wasn't any jurisdiction in the court, then there wasn't any reason for the matter to be there, and he insisted on having a motion to dismiss brought on and argued on July 14th. This, of course, did not come about. Through one reason or another, the

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1		matter was put off until July 28th, when
2		that motion was there, and you were there
3		at that time.
<b>4</b>	MR. MILLER:	That is correct.
.5	THE COURT:	Now, as I remember what happened
6		then, there was someone did you have
7		a memorandum supporting your position at
8		that time?
9,	MR. MILLER:	Yes, I did, your Honor.
10	THE COURT:	Did Mr. Pietropaoli?
11	MR. MILLER:	Mr. Pietropaoli did submit a memo-
12		randum that morning.
13	THE COURT:	Was it ready on that day?
14	MR. MILLER:	Yes, it was.
15	THE COURT:	All right. And the Judge was indicat-
16		ing that he was going to take in under
17		consideration, the jurisdictional point.
18	MR. MILLER:	I believe so, although the memorandum
19		submitted by Mr. Pictropaoli, if I may
20		interpret it, was more in support of his
21		motion for a preliminary injunction than
22		in opposition to our motion to dismiss,
23		and at that time I argued to the Court that
21		our motion to dismiss could also be
25		construed as an opposition to the motion

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for a preliminary injunction on the ground of the lack of jurisdiction of the Court to enter, such order.

That is right, it would be taken as in opposition to the injunctive relief.

That is correct. The Court then said that -- I believe because of the fact of vacations having been planned by the Court and by opposing counsel, that this matter would not be considered until September, and that Mr. Pietropaoli would have until September 15th to file additional papers.

of the July 28th transcript, he, Judge
Burke, "I suggest that the matter be
submitted for decision, including the
motion to dismiss. I will give you as long
as you want to answer it. Mr. Pietropaoli:
I would request some time around the midile
of September, in view of the fact that
I am going to be away at least two weeks
and possibly three weeks in the month of
August. The Court: All right, September:
15th." So that then this will be submittee

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n.m.

THE COURT:

THE COURT:

MR. MILLER:

September 15th. This will be the whole 1 2 opposition to the prayer for injunctive relief, including, I assume, the question 3 of jurisdiction. 5 MR. MILLER: That is correct. 6 THE COURT: Now, you tried quite strenuously to 7 get the Court to do something on an 8 earlier date, to get the matter transferred to Buffalo, and you were not able 10 to do so. You made the point-that you 11 would consider that the enjoinder that 12 Mr. Larimer had voluntarily given in June, the thirty day period of no collection, 13 had lapsed and ended, and the IRS was 14 15 now free to collect any monies, and this 16 precipitated the Court's direction on the 17 record that that would not be done, it 18 could not be done, that the IRS was going 19 to be enjoined until September 15th, and 20 finally he indicated that the enjoinder, 21 I believe, would be until further order

MR. MILLER:

THE COURT:

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24 25 That is a correct summation.

All right. Now, what concerns me, as I indicated to Mr. Williams, who, of course,

of the Court. Is that about what happened?

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MR. MILLER:

THE COURT:

MR. MILLER:

has no personal or direct knowledge about the matter, and it seems from the affidavit that Mr. Vitalone put in that he had no information concerning the court proceedings. He knew about the IRS background and probably the case itself, but it seems to me that what you are now asking me to do is something that you well could have and probably should have requested before Judge Burke.

In connection with the posting of the bond?

In connection with protecting the IRS situation during this period of enjoinder, during the period when the IRS is prohibited from collecting on its levies, and until the matter is submitted and decided.

Your Honor, at the time that I
appeared before Judge Burke, I was under
the impression, because the operating right
of the taxpayer had been seized, that
the taxpayer was no longer in effect
operating, and was not therefore generating
new accounts receivable, which would, as

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we view the statute, not be subject to the plaintiff's security interest. 2 3 5 6 7 8 10 11 12 13 14 15 16 17 18 19 20 THE COURT: 21 22

fore, the potential harm to the United States, other than perhaps to our legal position, our actual harm from the financial standpoint would be minimal because certain collateral had been seized, it would merely prevent the government from selling some assets, perhaps from collecting some remaining amounts, but it now appears, and thase facts only became known to us after the hearing, that the taxpayer is continuing to operate and generating accounts receivable, and these are being collected by the plaintiff under his security agreement, and this is why we did attempt to go back and see Judge Burke on the issue of some sort of protection during this interim period. Mr. Larimer went back on your behalf, this was on July 31st?

MR. MILLER:

Yes.

THE COURT:

And he presumably presented this facet of the matter to Judge Burke.

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MR. MILLER:

He attempted to. Now, I believe he

he was not even seen, that the message was relayed through the Judge's clerk or secretary.

Secretary, he doesn't have a clerk.

THE COURT:

MR. MILLER:

That is right. Judge Burke simply wouldn't see us or hear us, formally or informally. Had I known at the time that this kind of activity was going on, I would have requested some sort of protection for the government.

THE COURT:

You certainly stated to Judge Burke that the IRS would make the additional collections, and he certainly advised you in the negative on that.

MR. MILLER:

Yes, he did.

THE COURT:

You said on Page 7: "I will continue
to advise the Service, however, that it
may now collect. The Court: "No. You
may not advise it that it may now collect."
You asked that it be transferred to Buffalo
and the Court refused to do that, and you
maintained that the agreement, which I
take to be a reference to the agreement
that Mr. Larimer made, was no longer in
effect, and the Court said, "I will grant

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1		the stay until September 15th." The
2		Court didn't think any written order was
3		necessary, but if you wanted to present
4		one, you could. That was the end of the
5		matter, except for anything that happened
6		on the 31st. Now, Mr. Larimer isn't
7		available?
8	MR. MILLER:	He is in Rochester.
9	THE COURT:	I understand that. Is he on duty
10		in Rochester or otherwise available?
11	MR: MILLER:	I believe so.
12	THE COURT:	I have no information before me as
13		to anything that happened on the 31st.
14		Even absent that, however, I would conside
15		that it must have been contemplated by
16		the parties that if the IRS were not to
17		be allowed to collect on its levies, those
18		monies, whatever they were, I don't know
19		what they were, would find their way to
20		the plaintiff, wouldn't they, Mr. Mykins
21	MR. MILLER:	That is correct, your Honor.
22	THE COURT:	So in those circumstances, it well
23		should have been in the mind of whoever
24	,	was representing the IRS at that time,
25		namely, yourself, to have some bond or

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MR. MILLER:

other protective arrangement.

Your Honor, I would also point out thet there are substantial assets which have been seized and not sold, although the Court's order doesn't appear to prevent the government from selling those assets it is our understanding, subject to a welcome clarification from the Court if the Court chooses to do so, it is our understanding that the spirit of the Judge's order is to hold everything in place, to prevent the government from selling that which it has already seized That which it has already seized would be sufficient, if a fair price is received for it, to liquidate the taxpayer's liability to the government. It was my understanding at the time that the amount of accounts receivable or other equipment which had not been seized were, as I said before, rather minimal, and that there was no extraordinary need for protection. It was not my understanding that there were new assets being created, which might continue to be created in substantial

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11 THE COURT:

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amount, which would change the perspective as far as any protection is concerned. one of the assets which the government has are these operating rights under the Interstate Commerce Commission and the State Public Service Commission, Department of Transportation, and those certificates of public convenience of necessity would bring, I am informed, approximately \$80,000 if sold in the very near future.

Mr. Larimer in the June 23rd hearing is talking about the government having levied upon some property and then sold it. Now, this is at Pages 5 and 9, saying that plaintiff wanted to get that money back, and he said, "Of course, it happened some time ago, and any type of injunction would be fruitless at this point. In addition, on that point, I would say that whoever purchased the property of the taxpayer at the tax sale, of course, did so with the understanding that the property was purchased subject to any prior tax liens." He is talking in the past, something that has been accomplished

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Now, what was sold then? 1 I believe in May approximately \$11,000 2 MR. MILLER: worth of tangible personal property was 3 sold. I believe these were trucks and items of that nature that were sold, and 5 that money is in the Treasury. It is the subject of the first count of the plain-7 tiff's suit. Of course, should the 8 plaintiff prevail, that money is available to be paid to the plaintiff. But 10 what we are talking about now is the 11 seizure of additional accounts receivable 12 at this point and not --13 What is this other thing you can sell 14 THE COURT: for \$80,000, operating rights? 15 Operating rights, the certificates 16 MR. MILLER: of public convenience and necessity. 17 Which you said you had seized? 18 THE COURT: They were seized. MR. MILLER: 19 Yes. 20 THE COURT: It is our belief that they are not -MR. MILLER: 21 those particular rights are not covered either by the claim in the plaintiff's 23 complaint or by the order granted by 24 Judge Burke, in that there is no allegation 25

THE COURT:

rights appearing within the plaintiff's complaint. The plaintiff's complaint goes to accounts receivable and contract rights, it doesn't go as far as to include general intangibles nor to include tangible personal property, and it would be our understanding that the only thing that again, while the order says that the government shall not seize anything further -- it is our feeling that the spirit is that they shall not sell those things included within the scope of the complaint, that would be accounts receivable.

What he said was the government shall not collect on anything. He very clearly intended that there would be no inflow into the IRS of any of monies from this William B. Duffy Carting Company until a further order of the Court, which he contemplates to come some time after September 15th. There is no mention at all of the operating rights. There are mentions of collecting on accounts

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receivable but no restriction to these being accounts receivable that have already been generated and in existence or whother they are accounts receivable which would be generated in the future. There is no talk here about that operation. It would seem, as far as what was presented to Judge Burke, and what you must have understood the situation to be, would be the general accounts receivable with no limitation on something that happened in the past. Certainly nothing was presented to him in any of the statements before him to indicate that the William B. Buffy Carting Company operations were supposed to come to a halt. I, myself, don't know whether they are supposed to come to a halt. You 'levied upon them and seized them. I assume the operating rights are still viable, otherwise you would have nothing to sell. If they are viable, I suppose someone can operate under them. I don't know whether the seizure of the rights itself would put the carrier out of business.

MR. MILLER:

THE COURT:

That was certainly not the intention

I would think it wouldn't be your intention -- you have something to sell +if you find something that is an ongoing business and having some rights that have life to them and are being used, rather than lying dead upon a shelf, I would suppose that -- I don't know if these are Public Service Commission of New York State authorizations or Interstate Commettee authorizations . -- in either case, I would suppose either of those agencies, if there had been a stoppage of the operation under the rights, would probably consider t' im abandoned, and probably say they are not viable anymore, probably not sellable. Certainly there would be a question of law on that. Nothing came in to Judge Burke presenting this, and I would say that fault has to lie with the attorneys! who were standing there on those two occasions in front of Judge Burke presenting the facts of the case and the position of the parties, and it wasn't raised then, and I certainly can't see that I can

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MR. MILLER:

entertain it now. Judge Burke was very clear, it was well known that he was going to be on vacation, the matter was off until September 15th, he was not going to transfer the matter down here. I don't see any small ledge upon which you can stand.

There is one thing I would like to add for the record, that is, that we are here with Judge Burke's knowledge. He appreciated the fact that the government was seeking some immediate relief or immediate hearing, and either he or his office does have knowledge of the fact that we are here today, and we are going to be here on Friday to request that your Honor --

THE COURT:

How does he know that?

MR. MILLER:

Through Mr. Larimer. I only give this to you as hearsay at best.

THE COURT:

We don't know what happened then.

When did this happen?

MR. MILLER:

Also on Thursday the 31st.

THE COURT:

Oh, I thought you said you weren't sure any word got through to Judge Burke.

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MR. MILLER: 1 I said it got through to the Judge or 2 his office, and that apparently a message 3 was relayed back to the Assistant United States Attorney that if the government . was seeking relief, it could go to Buffajo. We asked if there was -- Mr. Larimer was 7 requested to ask, and I am informed did 8 ask, whether Judge Burke had any preference 9 as to before which judge this matter 10 should come, and I understand no preference 11 was expressed, again indirectly. THE COURT: 12 All right. Mr. Williams, do you 13 know whether lir. Larimer is still on 14 duty today? 15 MR. WILLIAMS: I don't know, your Honor. I know I 16 spoke to him last -- the one and only 17 time was this past Friday, and he indicated 18 that he is on duty. I know he had some 19 conflict, he couldn't be up here, he 20 said, but Mr. Miller would be. He is 21 more knowledgable about it than I am. 22 I have no knowledge of the facts --23 THE COURT: You don't know what the conflict is? MR. WILLIAMS: I don't know. I could put in a tele 25 phone call down there immediately and

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THE COURT:

determine what the situation is.

If we are going forward with something, we've got to know, first hand knowledge, just what went on. Mr. Larimer secms to be the repository of that knowledge. He is the one who, -- well, maybe he knows, maybe he doesn't. I think you could establish that by telephone. It seems that Mr. Larimer wouldn't know, because, to the best of Mr. Miller's knowledge, Mr. Larimer never made contact himself with the Judge, he only made contact with the office and got some message back, which, of course, again would be no indication of anything from Judge Burke and, of course, Judge Burke -- I don't know where he is now, most of the time he stays around Rochester when he is on vacation, a couple of times he has gone away. If he is around, of course, he always has access to a phone, and if he had wanted something to come down here or even had contemplated that something come down here, I would have supposed that he would have -- would have or could

have known it was coming before me, he probably would have called me. Of course, 3 I have had no indication from him. MR. WILLIAMS: I can't respond to the Court's comments . 5 THE COURT: I know you can't, you have no know-6 ledge, yourself, of what went on. 7 I would certainly, if I could, ask MR. WILLIAMS: 8 for a continuance for ten minutes to 9 attempt to reach --10 THE COURT: Mr. Pietropaoli, you have been sitting 11 on the sidelines because what we have 12 been talking about really doesn't bring 13 your guns to bear upon the matter at this 14 point. You have no knowledge, I assume, 15 of what went on, other than what went on 16 at the two hearings on June 23rd and 17 July 28th? 18 MR. PIETROPAOLI: That is correct. 19 THE COURT: You were not around or present or 20 involved in anything that happened with 21 Judge Burke on July 31st? MR. PIETROPAOLI: That is correct. As a matter of 23 fact, I was called back from vacation 24 by my office because this order to show

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cause was served on my office Honday.

See Mr.

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25 THE COURT:

wasn't in the office. One thing that does amaze me is that Mr. Miller was very anxious to have this order granting the preliminary injunction typed and signed by Judge Burke on the 28th. He consented to having somebody in the United States Attorney's office in Rochester type the order, came over, I approved the order as to its form, Judge Burke signed it on the 28th. With all this urgency, I can't understand why it took from the 28th to the 31st for the government to attempt to see Judge Burke when they knew on the 28th, Judge Burke indicated in open court that he would not be available the entire month of August. They waited until the last day of July to make an attempt to reach Judge Burke, and Judge Burke indicated that he would not transfer his case to any other judge in this district, that when he gods on vacation he adjourns his cases, he will hear this case in September, and I don't understand the time lag.

It certainly was very clear.

MR. PIETROPAOLI:

If Judge Burke wished to transfer this case to Buffalo, I am sure, as your Honor indicated, he has access to a telephone, and I am sure he would have called either your Honor or Judge Curtin and indicated that there was a transfer anticipated.

THE COURT:

He said flatly at Page 8 of the July 28th transcript, "No. I'm not going to transfer the case at all. I don't put my work over on the Buffalo judges merely because I go on vacation. Ever since I have been on the bench we close up here in August." That was very flatly and strongly stated. Now, the only thing is, the only loophole is whether or not something further or different happened on July 31st with Judge Eurke. If he has given some indication that I can rely upon that would indicate that he does consider that there is some facet that could be acted upon by me while he was on vacation, of course, I will look at it. I am going to look at it very squarely in the eyeball and with eyebrows

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THE COURT:

THE COURT:

raised because my disposition is to lean completely away from having anything to do with this matter that is before Judge Burke.

MR. PIETROPAOLI: If the Court please, if that were the indication, would I be wrong in assuming that Judge Burke would have contacted your Honor, either by telephone or by letter, indicating that --

I would assume --

MR. PIETROPACLI: -- new matter was brought before his court, he didn't have time to entertain it because of his vacation, and requests that one of --

I assume that would have been so.

He might have -- in the normal course

I suppose he would have called the

chief judge, Judge John Curtin, who -
let's see -- on the 31st, of course,

Judge Curtin wasn't here, and I would

have been the only judge here. He did

not contact me at all. I would make

that same basic assumption. If you will,

call Mr. Larimer and find out if he knows

anything that I can rely on. You know,

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I want first hand information. want something second hand or supposition. If you find that he has some information that can be relied upon, let me know, or let me know in any event, and if he does have the information, I will require him to come before me. This would mean that we will have to adjourn the thing until some time this afternoon when Mr. Larimer could be here and could state on the record what he really does know about what Judge Burke's disposition toward the matter is or toward my handling something of it, and when he saw him or was in his office on Thursday, July 31st. If he has nothing, why, frankly, Mr. Miller, there is no place for you to go.

MR. MILLER:

If I might add one thing in response to what counsel has said. It was not our intention at the time that this matter was heard before Judge Burke, and he reached his decision, to come back to the district court for any additional relief. In fact, the reason for the written order of injunction was to go to

we became aware of the fact that there were in fact additional assets in substantial amounts being carned and being collected that we felt that the district court rather than the Court of Appeals was the appropriate forum for some immediate relief. That is what changed our course of action.

MR. PIETROPAOLI: I cake exception to the sudden enlightenment by the government.

THE CCURT:

Maybe you will end up with two orders that you can take to the Court of Appeals.

Mr. Pietropaoli?

MR. PIETROPAOLI:

was in operation. Mr. Vitalone isn't a naive person. We have been in contact with Mr. Vitalone right along, as the revenue officer in charge. He has been down there. He knows they are in operation, he knows there were trucks leased that were hauling materials and going in and out of the Duffy Carting Company plant. They seized the trucks that Duffy owned, they seized the office

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equipment that Duffy owned, all the leased equipment was left there, and on May 15th, when the sale was held of the equipment that was seized by the Revenue Service, Duffy was operating with leased equipment. On June 23rd, the date of the hearing, the original hearing before Judge Burke, Duffy was still operating. On July 14th, the adjourned date, Duffy was still operatin. By the way, your Honor, the adjournment from July 14 to July 28th was at the request of the government, not my request, and on July 28th the government knew that Duffy was still operating. So there is no new information --

Let me ask you this --

MR. PIETROPAOLI: -- to come before this Court.

THE COURT:

THE COURT:

Let me ask you thi. If it had been the government's anticipation after the seizure of the rights to operate that Duffy was not going to be in business, how is the government now hurt by Duffy being in business and generating receivables, and having those receivables a collected by the plaintiff in this case?

1	MR. MILLER:
2	THE COURT:
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11	MR. MILLER:
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17	THE COURT:
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19	MR. MILLER:
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Well' --

You are talking about something that according to the government's understand; ing would not have come into being, would never have come, to the government, because if Duffy was out of business there would not have been the receivables. Really you are talking about something that is created by the operation that you thought was not going to be created.

It seems that from what Judge derke has said, and what your Konor has said this morning, that the government is precluded from selling those operating rights at this time. We are also precluded --

I think you would be safe to take that construction of his order, yes.

. We are also precluded from seizing the new assets which are coming into being. The longer that the operating rights are held and Duffy operates, I'm certain not at full capacity, the less those operating rights tend to be worth.

I agree with that, MR. PIETROPAOLI:

MR. MILLER:

The initial idea, as I understand it from the people in the Revenue Service, was to seize the operating rights and sell them as quickly as possible so that they would have full value. We don't know what is going to happen with Duffy. It seems the government will continue to be enjoined until relief is granted here or in the Court of Appeals, not September 15th, probably a month thereafter. September 15th date is the date by which counsel must reply to the government's motion to dismiss, and thereafter the Court will make a decision on the matter and while the government is enjoined from selling those operating rights, they will diminish in value. I would submit that they are in the nature of perishables

THE COURT:

There is a term limitation on them,
I assume?

should they become dormant.

MR. MILLER:

Right.

THE COURT:

They have almost automatic renewability to them as long as the carrier is operating in good form, they are for

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MR. PIETROPAOLI:

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THE COURT:

a certain period of time?

That is correct. They may be perishable. They are perishable if we take
the government's position that Duffy should
no longer operate, because once these
operating rights remain dormant for a
certain period of time the person or the
company to whom they are granted forfeits
those rights. The only way to keep the
rights value is to keep the company operating, and the company has been operating
pursuant to those rights in all the states
that the Interstate Commerce Commission
has seen fit to grant them those rights.

This was the matter of law I raised before. It seems to me that would be tenable.

MR. PIETROPAOLI: In addition, any sale of these rights,
either by Duffy or by the government,
would be subject to Interstate Commerce
Commission approval, and also the Public
Service Commission of the State of New
York approval, and I don't know who the
buyer is, nobody told me, but apparently
there is a prospective buyer. These

rights, unless those two governmental 1 agencies approve that prospective purchaser, the sale can be negated, and 3 the rights then probably would diminish appreciably in value if something like 5 that transpired. We would have to have 6 a good bonafide purchaser. 7 An acceptable purchaser. 8 THE COURT: MR. PIETROPAOLI: An acceptable purchaser by both 9 governmental agencies in order for the 10 rights to maintain the value which they 11 12 have. THE COURT: All right. Right now we will leave 13 it with Mr. Williams to be in touch with Mr. Larimer, to find out if there is 15 anything further that can come before 16 me, anything that is reliable evidence 17

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THE COURT:

as to what happened. If nothing, why I will merely make a decision on it. If there is something, see when he can get over here, and we will adjourn the matter. Mr. Miller and Mr. Pietropaoli don't want to hang around here three days.

I certainly can't, your Honor. MR. PIETROPAOLI:

If he is available, and has speething

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		I would say, unless whatever the other
		matter is is of a great over-riding
		emergency, he should adjourn it and get
		in the automobile and come over.
MR.	PIETROPAOLI:	Unless he spoke to Judge Burke
		personally, I would see nothing that Mr.
		Larimer could offer relative to this
		matter.
THE	COURT:	Let's sec what it is first.
		I would like to have an opportunity
		to talk to Judge Burke myself to verify
		what conversation took place.
THE	COURT:	I think you can rely upon me to
		verify anything.
MR.	PIETROPAOLI:	Thank you.
THE	COURT:	You will come back in chambers when
		you have something on it and let me know
		what it is.
MR.	WILLIAMS:	Very good. It shouldn't be more
		than five minutes.
		(Thereupon the court was in recess
		at 9:45 A.M.)
	THE MR. THE	MR. PIETROPAOLI: THE COURT: MR. PIETROPAOLI:

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MR. WILLIAMS:

(Proceedings resumed, pursuant to recess, commencing at 10:45 A.M.)

Thank you, your Honor. I appreciate the recess that the Court granted the government to determine what, if any, additional proof or information it wished to submit on this matter to the Court. During the recess I have had several conversations with David Larimer, the assistant in Rockester handling the matter there, who had contact with Judge Burke on Monday, August 4th. I would request the opportunity to submit Mr. Larimer's affidavit. I spoke with him five minutes ago and he indicated that he would start putting it together and get it to Joseph Vitalone, the revenue agent from Rochester, and have him drive up here. I would have Mr. Larimer personally present in the courtroom for his testimony as to what conversations he had with Judge Burke, however, there is a situation that he is involved in down there where, as I indicate to the Court in chambers, he is leaving

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and the United States Attorney are reviewing all the files that he has there, and this is apparently the only day they have to do it. I would ask the Court to take his affidavit in lieu of his testimony as to his contact with Judge Burke and any conversation they had on Monday. I would say that we certainly could have it here no later than two o'clock this afternoon.

MR. PIETROPACLI:

heard? Your Honor, please, it is now about three minutes to eleven. I have been here, called back from a vacction, since nine o'clock this morning for the purpose of arguing the government's motion which is brought on by an order to show cause signed by your Honor. It is their motion, your Honor. I was ready at nine o'clock. I was ready at ten o'clock, and I am ready now. I strongly object to any affidavits being brought up here by Mr. Larimer without the possibility of my having the opportunity to cross \*examina"

Apparently his testimony the govern-

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ment feels is important to their position. If that is the case, Mr. Larimer should have been here at nine o'clock this morn ing. All other counsel were here, all witnesses should have been here. I strongly oppose the request to submit in affidavit form the testimony of Mr. Larimer on the grounds that I am not able to cross examine an affidavit, and I request that the case be moved immediately, in view of the fact that the plaintiff is ready. THE COURT: In the nature now of an offer of proof, Mr. Williams, what would Mr. Larimer's affidavit set forth, to the best of your information? MR. WILLIAMS: To the best of my information, your Honor, it would set forth the fact that I didn't ask Mr. Larimer about the time on August 4th he saw the Judge, and asked

THE COURT:

You say the "Judge," he saw Judge

Burke?

the Judge --

MR. WILLIAMS:

He saw Judge Burke personally and

THE COURT:

MR. MILLER:

versus -- I'm not sure of the proper title of the action -- so that it would be brought up to this court for purposes of argument on the motion returnable this morning. Further, that Judge Burke said okay -- strike that -- that Mr. Larimer said the purpose of the motion was to seek a bond as security in the interim, and Judge Burke said, "Yes, I know all about that, the guy from Washington called us last week." I think that is basically what his testimony and affidavit would be.

All right. Now, during the recess
we had colloquy or a conference in chambers
which was not on the record, and at that
time, Mr. Miller, you indicated some
further contact that you had had with
the Judge in the Judge's office. Would

Yes, your Monor. After speaking with Mr. Larimer by telephone in Rochester early this morning, my recollection as to activities, which were not revealed earlier this morning when we first were in court,

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OFFICIAL REPORTER, U.S. DISTRICT COURT

you place that on the record?

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was refreshed. In the early afternoon of July 31st, after Mr. Houlihan, Assistant United States Attorney in Rochester, and, I believe, Mr. Larimer, also an Assistant United States Attorney in Rochester, had indicated that they were unable personally to get through to the Judge, Judge Eurke. Mr. Larimer or Mr. Houlihan, I'm not certain which one, I believe it was Mr. Larimer, suggested that I attempt to contact the Judge directly by telephone. I phoned --

You were at that time in Washington?

I was in Washington. I placed a call to Judge Burke in his chambers. I spoke with his secretary, Miss Malcney, I believe is her name, and expressed to her our desire to obtain a hearing as quickly as possible on the matter of having a bond posted to secure the government in the plaintiff's collection of currently earned accounts receivable. The Judge's secretary told me that the Judge was at that time out of the building or out of his office but would return

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THE COURT:

MR. MILLER:

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23 THE COURT: 24 MR. MILLER:

shortly"and she would give him the message. I also informed her that I had reservations on two airplanes that would get me to Rochester late in the afternoon or early in the evening, and if it was possible, for the Court to schedule a hearing later that day, I could and would be there. If the Court was unable to hear us, I suggested that the matter on an emergency basis be transferred to Buffalo for a hearing before one of the two district judges in Buffalo, and asked if the Judge had any preference -- if Judge Burke had any preference as to which district judge in Buffalo this matter be brought before, that it be expressed. Between approximately threefifteen and three-thirty on the same afternoon, July 31st, I received a call from the Judge's secretary, telling me that the Judge either would not or could not see us that day.

Do you remember which?

. I don't remember which, and that we could go to Buffalo if we so choose,

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- 11	"
. 1	that he had no preference as to before
1	whom we brought the matter. That I believ:
2	is as complete a report of the transactions
	is as complete a report of the
3	or the telephone conversation with Judge
4	or the telephone
.*	Burke's office that I can give you.
5	Burke's Ollar is not under oath, and Mr. Miller is not under oath, and
	Mr. Miller 15 not and
6	THE COURT:  I don't see any need to place him under
7	oath. He is an attorney and an officer
	oath. He is an attorney and an
8	of the court, even though I suppose he is
9	of the court, even
. 1	not admitted to practive before this
10	100 - 111
	court specifically.
11	That is correct.
12	MR. MILLER:
	THE COURT: . I would assume he would lend himself to
13	THE COURT: . I would assume the same of him.
14	any questioning
	Mr. Pietropaoli, is there any statement
15	you want to make of your own factual
16	you want to make
. 10	knowledge?
17	knowledge.  I would like to make a statement
	MR. PIETROPAOLI: I would like to manage at ion that Mr.
18	letive to this converse
1	Miller has just related to the Court.
	Miller has just related
	willer and I also had a conversation
	Mr. Miller called my office from Washing
	Mr. Miller called my office
	22 ton some time on Thursday, I believe is
	ton some time to July 31st.
	23 was late Thursday morning, July 31st.
	2t 1
	THE COURT: The 31st?
	- 1051
	OFFICIAL REPORTER, U.S. DISTRICT COURT

MR. PIETROPACLI:

The same date that he is talking about having the conversation with Judge Burke's secretary. If the Court please, at no time during that conversation with Mr. Miller did he indicate to me, the opposing counsel in this matter, that he was attempting to arrange an appointment with Judge Burke or was attempting to arrange a hearing in the federal district court in Rochester, or Thursday afternoon or Thursday evening, at no time did he mention to me that he had airplane reservations to come to Rochester in order to see Judge Burke. So, your Honor please, I have absolutely no knowledge of this fact. As a matter of fact, Mr. Miller did indicate to me in that telephone conversation that the government was deciding whether or not to appeal Judge Burke's order to the Court of Appeals in New York City. At that time I indicated to Mr. Miller that I would be away this coming week, which means the week starting August 4th, and I indicated to Mr. Miller that I would appreciate the courtesy of

H. T. NOEL
OFFICIAL REPORTER, U.S. DISTRICT COURT

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a telephone conversation from him wither Thursday afternoon or Friday, August 1stl telling me what the position of the government was, and I never received that telephone conversation or that telephone call. your Honor. I was in my office all day Thursday. I was in my office all day Friday, the 1st of August. I was called back from a vacation, your Honor please, because an order to show cause for me to appear before this Court was signed by your Honor on Friday, August 1st in this court. Mr. Miller had knowledge of that order to show cause that was signed by your Honor. I still didn't receive a telephone call. In fact, Mr. Miller promised me that whatever decision was made by the government, relative to this case, he would either telegram me or send me a night letter telling me what decision had been made by the government. If it please the Court, I received no communication from Mr. Miller. I find that highly irregular when counsel have an agreement! I' came back from my vacation to be here

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MR. MILLER:

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this morning. I wish to reiterate my earlier position. At nine o'clock I was ready, I am ready now, and I strongl object to any affidavits being submitted which contain hearsay testimony about conversations with Judge Burke's secretary and things of that nature. It is my understanding that Judge Burke is in Rochester. It is my understanding that Judge Eurke is available. It is my understanding that if Judge Burke wished to transfer this case to Buffalo, Judge Burke would have done that by court order signed by Judge Burke. It is further a matter of record that on July 28, 1975, in the courthouse in Rochester, New York, the Federal Courthouse, the request was made to transfer this entire matter to Buffalo and Judge Burke emphatically denied that request. I stand upon the record and my position of being ready today .

In brief response, I would like to add that at the time that I spoke with counsel on Thursday morning, July 31st,

H. T. NOEL

1 we had not as yet any plans to go before 2 Judge Burke to seek a bond. We were still 3 contemplating an appeal. I had no airlike reservation to Rochester at that time. . 5 Prese things were done in a good bit of 6 haste early Thursday afternoon, the 31st, 7 and there was an attempt made to contact 8 Mr. Pietropaoli, and I had a good deal of 9 difficulty getting through on the phone. 10 You couldn't get his office? THE COURT: 11 No: As your Honor may be aware, there MR. MILLER: 12 are times when it is difficult to make 13 phone calls out of Washington, especially 14 in the afternoon. 15 If your Honor please, my office MR. PIETROPACLI: 16 number --17 THE COURT: I am aware of some difficulties in 18 that regard that might involve the 19 federal telephone system, commonly 20 referred to as the FTS, but there is 21 nothing that would preclude you getting 22 out by commercial line, is there?

MR. MILLER:

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of Justice it is some times difficult to get a dial tone. I believe -- I'm no

1		certain" that I did at one time call
2		Mr. Pietropaoli's office and spoke with
3		this secretary. I'm not absolutely certain
4		of that. I know I also called one or
5	•	two times earlier in the week, and quite
6	· ·	honestly, I may not be entirely accurate
7		as to the chronology of events regarding
8		various telephone calls.
ğ	MR. PIETROPAOLI:	. That is incorrect. I was in the
10		office, and there was no telephone call
11		from Mr. Miller on Thursday, the 31st.
12		There was no telephone call, telegram or
13		anything else from Mr. Miller on Friday,
14		August 1st. Yet all these conversations
15		with Judge Burke and his secretary and
16		whoever else was involved were going on,
17		but nobody tole me about it.
18	THE COURT:	When was it that he was talking with
19	2 .	you about the possible appeal?
20	MR. PIETROPAOLI:	That would have been in the morning
21		at approximately I would say around
22		eleven, eleven-thirty, on July 31, 1975
23	THE COURT:	That is what I thought that you had
24		that call on the 31st.
25	MR. MILLER:	Let me say that conversation on

II.

that morning related to the government's opinion vis-a-vis the order entered by Judge Burke, that is, that it appeared not to restrict the sale of the operating rights or of any tangible personal property because of the nature of the pleadings before the Court and the limited scope, as we viewed it. What I conveyed to Mr. Pietropaoli at the time was that if we decided to advise the Internal Revenue Service that there was no restriction on the sale of the operating rights or of any tangible personal property, we would so advise him in writing so that he would have an opportunity to approach the Court to obtain an interpretation or some further relief that was necessary. We never did advise the Internal Revenue Service that there was no restriction in our opinion on the sale of the operating rights or the tangible personal property. I suggested to Mr. Pietropaoli that if he wanted to move ahead to ask the Court for relief based on my telephone call, that would be all right with me. He in turn came

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back and said that he thought he needed something in writing, he couldn't operate on telephonic hearsay, and requested a piece of paper, which I said I would give him if we were going to proceed in that manner. We did not elect to proceed in that manner.

MR. PIETROPAOLI:

If your Honor please, the original conversation relative to the interpretation of whether the rights, the operating rights fell within the scope of the security agreement was, I believe, on July 29th, which would have been Tuesday, the day after we were in court. Mr. Miller flew back to Washington, and called me to indicate that Judge Burke had signed the order, it was filed with the Clerk of the Court, and a true copy was being sent to me by mail, and indicated that he was going to be doing some research relative to the rights, what his opinion was, and what the Department of Justice would advise the Service to do relative to the caused rights. He did call me back on the 31st which was the conversation that I previoual

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related to the Court. We did have conversation concerning the rights, as Mr.

Miller indicated. We also had conversation relative to the possibility of the government taking an appeal from Judge Burke's order, but we never had any conversation relative to a motion being brought before your Monor or Judge Curtin for the purpose of obtaining security from my client.

There had been no such decision made or in fact contemplated at the time

MR. PIETROPAOLI:

MR. MILLER:::

MR. MILLER:

had to have been prepared. They were attempting to reach Judge Burke. I was in my office. Nobody got back to me, and somebody got up here to Buffalo on Friday, August 1st, so that your Honor could sign an order to show cause. So something had to be contemplated on July 31st. I don't know at what time or what hour, I'm not inside Mr. Miller's brain

statement. At the time that I concluded
my telephone conversation with counsel.

there had been no decision. In fact, the

idea of coming to this Court hadn't been

contemplated. It was our intention at

the time to determine whether or not we

would advise the Service to go ahead and

begin collection and/or the sale with

respect to the operating rights. If we did so advise them I would give Mr. Pietropaoli a piece of paper on which he could go to the Court, and let him take the initiative of going before Judge Burke or such other judge, as he saw fit to do. If Judge Burke was unavailable, let him bring on any other further proceedings before the Court in order to obtain additional relief or an interpretation of the Court's order. I assume then, as you have indicated, the IRS never then was advised by the Department of Justice that it could in

the current status proceed to sell the

THE COURT:

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THE COURT:

MR. WILLIAMS:

MR. MILLER:

That is correct.

. Okay.

operating rights?

If I may add one thing about the events

of Friday, August 1st, relating to any communication between Mr. Miller and Mr. Pietropaoli, asthe Court will recall, I think the show cause was signed shortly before Five-thirty, close to it, and I went downstairs, I conformed copies, my secretary had left, I took the time to type out an envelope and stick in one conformed copy directed to Mr. Pietropaoli. I gave instructions to Mr. Vitalone, the IRS agent, with respect to service of a conformed copy upon Mr. Pietropaoli's office by noontime on Monday, and then I made a telephone call to Jerry Miller at his office in Washington, which was about ten minutes of six that day, to inform him that an order had been signed, returnable this; morning at nine, he better make plans to come up Tuesday night.

Well, my determination is that I cannot out of, if you will, comity and the relationship that exists between judges, and rules of law that apply thereto, as far as overruling or undercutting

THE COURT:

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or piecing around an order that has been signed by another judge of the same level that I hold, same position, and I cannot on what is shown here today find any basis for my intercession in this case. Whatever further matter was not specifically dealt with by Judge Burke seems to come about by way of a second thinking, after the parties had appeared before Judge Burke on July 23th; something that well should have been thought of at that time, could have been thought of at that time, and certainly was thought of on the following day, July 29th, as shown by Mr. Miller's statement that the Department of Justice was at that time making up its mind from a legal point of view as to what the Department should advise the Internal Revenue Service concerning the breadth and scope of Judge Burke's order, and particularly as it would relate to those operating rights. So this was in the mind and brought to the attention of Mr. Miller and others as of the day following the

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signing of the order, and certainly even at that time it would have been much more feasible to get through to and have the further attention of Judge Burke on the matter, prior to the start of his vacation on August 1, if he had been disposed to take on that further application or felt it was not covered by what he had already The offer of proof, direct knowledge by Mr. Larimer; as to what happened on Monday, August 4, I find not to be at all helpful, if I wanted help, insofar as giving me some position in the case. -. By that time I had signed an order to show cause bringing it down here, the matter was coming down here by virtue of that order, and it was a matter then of getting hold of the physical file, which I infer was in Judge Burke's personal possession and in his chambers, which is the only reason there was some approach made to him on that day, and nothing that Mr. Larimer would tell us would be more than some recognition by Judge Burke that the matter was coming

down before me, pursuant to my order.

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Thank you.

MR. MILLER:

MR. PIETROPACLI:

If I may, just for the record, I may not have been absolutely clear as

Certainly nothing came from Judge Burke to me, directly or indirectly, indicating any desire on his part or even any willingness on his part that any judge, any district court judge, other than himself

get involved in this particular case. So I am saying flatly that I will not involve myself in the matter, and I won't

even -- I am going to cut it off right there, and say that I am not involved

in the case. It is Judge Burke's matter, You have an order from Judge Burke that

you have interpreted in a certain way,

and I, from my brief look at it, I would say that you have come to a correct inter-

pretation, that the injunction which you

now have is a stay of all further collect-

ion procedures by the Internal Revenue

Service until the matter comes again

before Judge Burke. I have to leave it

that way.

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THE COURT:

MR. MILLER:

THE COURT:

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your Honor related his understanding of
the events that transpired in the Department of Justice, but on July 29th there
was no contemplation of the United States
taking further action at the district
court level. It was an administrative
action that was contemplated, which might
bring on --

I understand that.

-- action by the plaintiff.

I understand it. There was in the mind of the -- the collective mind of the Department of Justice at that time the matter of the operating rights, as to whether or not they were covered by the current injunction, whether or not the Internal Revenue Service could, pursuant to the phraseology and breadth of the injunction, go ahead and sell, although if that were your decision, you were going to tell Mr. Pietropaoli that this was so, so that he could take it upon himself to apply to Judge Burke for any further protection that he might be able to obtain, but the matter of

the operating rights and the ongoing

Department as of that time, July 29th.

That is, however, only one facet of my

determination. The basic determination

is that Judge Burke has fully dealt with

the matter, to the extent that aspects

were brought before him, and any that

was not brought before him at that time

or prior to his starting on his vacation

well could have been brought and should

have been brought and, consequently, I

flatly am not going to involve myself

my full determination.

in what I know to be his matter. That is

operation was certainly before the

MR. MILLER:

Thank you, your Honor. We do appreciate your time and the indulgence of the Court, and I also understand the rather difficult position in which this Court has found itself, given the relation ship among judges in the same district and --

THE COURT:

It is a relationship that has to exist. I mean it has to go on that way. One judge does something or does not do

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something, the relief from that non-doing 2 or doing lies with a higher court, not with a brother judge. MR. MILLER: We fully understand the rationale of the Court's actions. 6 THE COURT: All right, thank you. MR. MILLER: Thank you, your Honor. THE COURT: You may return to your vacation, Mr. Pietropeoli. MR. PIETROPAOLI: Thank you, your Honor. 11 12 13 14 15 16 17 18 19 20

I hereby certify that this record to a true and accurate transcript from my stenographic notes in this proceeding. Viring V. Jan

> Official Reporter U.S. District Court

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## CERTIFICATE OF SERVICE

It is hereby certified that service of this record appendix has been made on opposing counsel by mailing four copies thereof on this \_\_\_\_\_\_\_ day of November, 1975, in an envelope, with postage prepaid, properly addressed to him as follows:

Patrick J. Pietropaoli, Esquire Mittleman and Pietropaoli 604 Executive Office Building 36 West Main Street Rochester, New York 14614

GILBERT E. ANDREWS,
Attorney.